

WATERGATE Special Prosecution Force

REPORT

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Introduction

The Watergate Special Prosecution Force (WSPF) has worked for 28 months as an independent investigatory and prosecutive agency within the Department of Justice. As a result of its work, judges and juries have applied the criminal sanction to an unprecedented number of high Government officials and to important business leaders. The Special Prosecutor's mandate includes the requirement that he shall report to the public and to Congress about his activities.

Some of the task lies ahead. Appeals will proceed for probably two years or more. A few cases have to be completed. But most of the work of the office is done and most of the staff have finished their tasks. It now seems appropriate to summarize the completed work in a comprehensive report.

No group of prosecutors and supporting personnel ever have labored under greater public scrutiny. Every decision seemed to be a delicate one and previously uncharted courses frequently had to be faced. Each action occurred in the midst of a national turmoil and, in retrospect, some may be judged in the future as just plain wrong. This report seeks not to justify, but to explain. The Congress, the American people and other law enforcement agencies gave continued support to the efforts of this office. A full accounting, within the confines and strictures that the law properly places upon prosecutors, is required.

This report contains no facts about alleged criminal activity not previously disclosed in a public forum. Many public officials saw the Special Prosecutor as one with special privileges to lay bare what witnesses had said and to offer his own, personal conclusions as to what really happened. Other persons also asserted that President Nixon's pardon, and Congress' passage in the middle of WSPF's work of a retroactive, 3-year statute of limitations for campaign law violations (replacing the normal 5-year period for initiating prosecutions) reinforced the propriety of releasing grand jury testimony, informants' allegations, and the confidential assertions of cooperative witnesses.

However, for WSPF to make public the evidence it gathered concerning the former President and others who were not charged

with criminal offenses would be to add another abuse of power to those that led to creation of a Special Prosecutor's office. The Federal Rules of Criminal Procedure prohibit the disclosure of information presented to a grand jury except as necessary in the course of criminal proceedings.¹ The American Bar Association reinforces this stricture in its *Code of Professional Responsibility* and limits the circumstances under which attorneys involved in criminal investigations are free to make out-of-court statements about the details of their work.

Most important, in terms of the American constitutional system of government, is the notion of fundamental fairness for those who, after investigation, have not been charged with any criminal misconduct. This consideration is particularly important for a Special Prosecutor whose independence considerably reduces his accountability and who must be unusually sensitive to possible abuses of his power. It is a basic axiom of our system of justice that every man is innocent unless proven guilty after judicial proceedings designed to protect his rights and to ensure a fair adjudication of the charges against him. Where no such charges are brought, it would be irresponsible and unethical for a prosecutor to issue a report suggesting criminal conduct on the part of an individual who has no effective means of challenging the allegations against him or of requiring the prosecutor to establish such charges beyond a reasonable doubt.

The decision to remain within the boundaries placed upon all other prosecutors is in no sense an absolute bar to public knowledge; approximately a quarter of a million pages of Watergate facts already exist for public consumption. This material includes the public hearings and published reports of the Senate Select Committee on Presidential Campaign Activities and the House Judiciary Committee, other existing and forthcoming reports of Congressional committees, the voluminous records of the criminal trials resulting from WSPF's investigations, evidence obtained in several civil suits, and numerous books and articles analyzing the events of "Watergate" from a variety of perspectives. The most significant of such records are listed in a bibliography in the appendix to this report. In addition, the Presidential Recordings and Materials Preservation Act of 1974, if upheld by the courts, will provide the public with access to enormous amounts

¹ Recorded Presidential conversations were made available to the Special Prosecutor and the grand jury only for use in the investigation and prosecution of criminal charges, not for the purposes of a public report. Since the Supreme Court in *United States v. Nixon* ordered the President to supply the tapes only for such use, the Special Prosecutor is barred from disclosing any Presidential materials other than those used in court proceedings. The public's right of access to these materials, along with the former President's assertion of ownership and executive privilege to control their disclosure, is now the subject of litigation which also restrains release of Presidential materials.

of information from the files of the Nixon Administration, including tape recordings of Presidential conversations.

Subject to the constraints described above, the following report attempts to describe accurately and completely the policies and operations of the Watergate Special Prosecution Force from May 29, 1973 to the middle of September 1975. The five chapters of the main report contain a narrative of operations, a description of office policies and practices in investigative and prosecutive decisions, summaries of major investigations, a narrative of relations with the White House during the Nixon and Ford Administrations, and observations and recommendations. The attached appendix contains more detailed information on the organization of the office; relations with U.S. Attorneys, Congressional committees and other law enforcement agencies; press relations; the office administration and information system; a chronology; a status report of all court matters; and the bibliography.

Brief History of the Watergate Special Prosecution Force

BACKGROUND AND ESTABLISHMENT OF OFFICE

Agents of the Committee to Re-Elect the President (CRP) broke into the Democratic National Committee headquarters in the Watergate office complex on June 17, 1972. The resulting conspiracy, burglary, and wiretapping charges produced convictions of seven men the following January in a trial before Chief Judge John J. Sirica of the U.S. District Court for the District of Columbia. By that time various public allegations had created suspicions that high-level officials of CRP and the Nixon Administration had engaged in a variety of illegal activities connected with the 1972 campaign, of which the Watergate break-in was only one. As a result, the Senate established its Select Committee on Presidential Campaign Activities, chaired by Senator Sam J. Ervin, Jr.

On March 19, 1973, before the Select Committee hearings started, James W. McCord, one of the convicted Watergate burglars, wrote an explosive letter to Judge Sirica who was to sentence him 4 days later. McCord's letter, revealed in open court, claimed that Government witnesses had committed perjury during his trial and that the trial had failed to identify others involved in the Watergate operation. Throughout April, news accounts based on the reopening of the criminal investigation, the initial Select Committee inquiries and press investigations—as well as public statements by the Administration—increased public doubt about the conduct of high White House and campaign officials. These doubts heightened at the end of April with the dismissal of the counsel to the President, and the resignation of the Attorney General, the acting director of the Federal Bureau of Investigation, and two of the President's closest aides. Further public concern arose about the desirability of the U.S. Attorney's office continuing its investigation, especially in light of publicly assumed interference from Justice Department and White House officials. During his confirmation hearings before the Senate Judiciary Committee, the newly designated Attorney General, Elliot

Richardson, pledged to appoint an independent special prosecutor to take over the inquiry.

With the approval of the Judiciary Committee, Richardson and Archibald Cox, his ultimate choice for the post of Special Prosecutor, agreed upon the terms of Cox's charter. The resulting statement, entitled "Duties and Responsibilities of the Special Prosecutor," became part of Department of Justice regulations and defined the Special Prosecutor's jurisdiction in these terms:

The Special Prosecutor shall have full authority for investigating and prosecuting offenses arising out of the unauthorized entry into Democratic National Committee headquarters at the Watergate, all offenses arising out of the 1972 presidential election for which the Special Prosecutor deems it necessary and appropriate to assume responsibility, allegations involving the President, members of the White House staff, or presidential appointees, and any other matters which he consents to have assigned to him by the Attorney General.

Richardson also pledged to Cox adequate funding, complete independence in hiring and supervising his staff, and sole responsibility for contesting any "executive privilege" or "national security" claims which might be raised to prevent the acquisition of evidence. Cox could decide whether to seek grants of immunity (subject to the Attorney General's approval as required by statute), and whether and to what extent he would inform or consult with the Attorney General about his work. Richardson further agreed that he would not "countermand or interfere with the Special Prosecutor's decisions or actions," and that he could remove Cox from office only for "extraordinary improprieties." On May 25, 1973, Cox was sworn in as Special Prosecutor and the Watergate Special Prosecution Force (WSPF) was officially established within the Department of Justice.

MAY 25-OCTOBER 20, 1973

Richardson had told the Senate Judiciary Committee that Cox's jurisdiction would include the Watergate case, the activities of alleged political saboteur Donald Segretti, the office burglary of Dr. Lewis Fielding, Daniel Ellsberg's psychiatrist, and illegal activity involving 1972 campaign contributions that Cox chose to investigate. Richardson later referred to Cox certain allegations, including possible perjury in Senate hearings relating to Administration handling of an antitrust suit against the International Telephone and Telegraph Corporation (ITT). When the Justice Department's Criminal and Tax Divisions were conducting any investigations regarding matters related to his jurisdiction, they would inform the Special Prosecutor and ascertain if he wanted to take responsibility. In addition, after initial discussions and inquiries, the Special Prosecutor arranged to use the FBI for

investigative work and to send investigative requests directly to the Bureau without transmittal through the Attorney General.¹

One of Cox's first problems was the possible impact on his work of the Senate Select Committee's televised hearings, which had begun about a week before he took office. Although the Committee and the Special Prosecutor's office were investigating many of the same allegations about Watergate and other Nixon Administration activities, each meant to use the information it would gather for a different purpose, in accord with its particular responsibilities. The Committee sought to bring facts before the public in order to propose legislative remedies for any abuses it might uncover; the Special Prosecutor had the responsibility of investigating and prosecuting specific criminal charges. The danger existed that legislative hearings might frustrate the criminal proceedings. For example, in order to obtain the testimony of several important witnesses, the Committee planned to immunize them, thus barring any prosecution that could be shown to be based on any direct or indirect use of their Senate testimony. In addition, the televised hearings might create adverse publicity about potential defendants in criminal trials, especially a Watergate trial that then seemed likely to begin in a few months. For these reasons, Cox requested that the Committee postpone its hearings; the Committee quickly rejected this request.

Before two Committee witnesses were immunized, Cox acted to reduce the chance that a future criminal case against either of them would be "tainted" by evidence obtained as a result of their testimony. He arranged to have the evidence already gathered against each of them deposited under seal with the District Court before they testified at the Committee hearings. And, to minimize possible pretrial publicity and ensure maximum fairness to potential defendants, he sought a court order that the Committee's grants of immunity be conditioned on its holding hearings in executive session, or at least without radio and television coverage. However, Judge Sirica concluded that he had no power to issue such an order to a Congressional committee, and Cox decided not to appeal the decision, since a prolonged conflict with the Committee would have kept both groups from their investigative work and the likelihood of a successful appeal was doubtful. In the end, the continuation of public hearings through the summer of 1973, among other benefits, brought to public attention testimony relating to alleged White House involvement in the Water-

¹ Richardson and Cox also made an agreement as to the prosecution of former Administration officials and others on charges relating to favorable treatment of financier Robert Vesco in return for a campaign contribution. While the matter was within the Special Prosecutor's jurisdiction, Cox agreed that it should continue to be handled by the U.S. Attorney's office for the Southern District of New York, which had conducted the investigation and obtained the indictment in the case. Thereafter, WSPF exercised very little supervisory authority over the case.

gate cover-up and other crimes and thereby helped create for the Special Prosecutor's investigation a base of public and Congressional support that did much to force the re-establishment of WSPF after the President's attempt to abolish it later that year.

This early conflict over the possible harm that the Committee's televised hearings would inflict on the cover-up investigation soon subsided. In other WSPF matters, the Committee's staff had commenced its investigation some months before the prosecutors were appointed and had gathered much information of value to WSPF. Most of this information was placed on computer tapes, which the Committee agreed to provide to the prosecutors.² WSPF decided to undertake a similar computer operation, and arranged to use the same Library of Congress computer system so that information gathered from other sources could be cross-referenced with that obtained by the Committee.

Meanwhile, Cox was selecting a staff that eventually numbered, in permanent positions, 37 attorneys, 16 other professionals, and 32 supporting personnel by August 1974.³ The bulk of the investigative work was divided among five task forces, each responsible for a broad area of investigation—the Watergate break-in and cover-up; the allegations about ITT and possible perjury during 1972 Senate hearings; the activities of the White House "Plumbers" group, including the break-in at Ellsberg's psychiatrist's office; ⁴ Segretti's activities and other alleged campaign "dirty tricks"; and illegal conduct in the financing of the various Presidential campaigns of 1972.

Assisting and providing support for the task forces were several other groups. A counsel's office was established to provide legal advice to the Special Prosecutor and the task forces. An information section went to work summarizing and cross-indexing the masses of Congressional and grand jury testimony that had already been gathered, and creating a filing and reference system that would give any WSPF investigator access to whatever information was already available in the area of his inquiry. An office of public affairs handled relations with the press—an especially sensitive task in view of the dual demands of the First Amendment's free-press guarantees and the right of a potential defendant to a trial unprejudiced by publicity about his conduct. An administrative office dealt with the many problems of space allocation, payroll, supplies, equipment, clerical help, and

² While the initial agreement between the Committee and the Special Prosecutor had covered only information made public at the Committee's hearings, the Committee agreed in March 1974 to provide WSPF with computer access to other information its staff had gathered which had not been disclosed in hearings.

³ In addition, there were ten temporary employees at that time.

⁴ This task force also looked into various alleged abuses related to Federal agencies and later into possible illegal activity in connection with President Nixon's tax returns.

messenger service. The FBI and IRS supplied personnel who worked closely with WSPF in some of its investigations, while the Federal Protective Service provided security services for WSPF's offices in a private building in downtown Washington.

The Assistant U.S. Attorneys who had handled the initial Watergate investigation—Earl Silbert, Seymour Glanzer, and Donald Campbell—worked with WSPF until the end of June, when they returned to the U.S. Attorney's office for the District of Columbia. The grand jury that had brought the original Watergate indictment in the fall of 1972, and had received new evidence in the spring of 1973, continued to hear evidence gathered by WSPF in the Watergate cover-up case. In August a second grand jury was empaneled to hear evidence in other cases, and a third grand jury was added in January 1974. Because the original grand jury was so familiar with the Watergate case, special legislation in December 1973 extended its term beyond the normal 18 months.

As the various task forces were absorbing information already gathered by other investigators and beginning to interview witnesses and bring them before the grand jury, the Senate Select Committee continued its hearings. In June, former White House counsel John Dean gave testimony implicating President Nixon and his closest advisors in the Watergate cover-up. On July 16, a former White House official told the Committee that President Nixon in 1971 had installed in the White House a taping system designed to record his meetings and telephone conversations. This revelation opened up the possibility of obtaining evidence that could resolve the conflicting testimony about alleged involvement of Administration officials in various crimes.

On July 23, the Special Prosecutor, after unsuccessful attempts to obtain such material from the President on a voluntary basis, issued a subpoena on behalf of the grand jury for the tapes, notes, and memoranda of nine conversations which the available evidence indicated were relevant and necessary to the investigation. The President opposed the subpoena, and appealed Judge Sirica's order enforcing it to the U.S. Court of Appeals for the District of Columbia Circuit. After first suggesting that Cox and the White House seek a compromise—which they were unable to do—the appellate court on October 12 affirmed Judge Sirica's order with modifications sought by the Special Prosecutor. The Court directed Judge Sirica to listen to the tapes to determine whether they contained discussions subject to a valid claim of executive privilege, and then turn over any unprivileged sections of the tapes to the grand jury.

While the litigation over the subpoenaed tapes had delayed the Watergate and other WSPF investigations, the prosecutors had made considerable progress in the first six months of their work. The Water-

gate investigation had produced guilty pleas from Fred LaRue, Jeb Magruder, and John Dean on charges of conspiracy to obstruct justice. Donald Segretti had pleaded guilty to charges of conspiracy and distributing campaign literature without properly identifying its source, in connection with his "dirty tricks" operation. Egil Krogh, Jr. had been indicted for lying to the grand jury in prior testimony regarding the "Plumbers'" activities. Three large corporations—American Airlines, Goodyear Tire and Rubber, and Minnesota Mining and Manufacturing—had entered guilty pleas to making illegal corporate contributions in the 1972 Presidential election, as had the responsible officers of two of them. Dwayne Andreas and his First Interceanic Corporation had been charged with the same offenses. Other investigations had progressed, and were expected to produce additional indictments and guilty pleas. In the negotiations leading to their guilty pleas, Segretti, LaRue, Magruder, and Dean had agreed to disclose to WSPF what they knew about the Watergate case and other matters under investigation.

Dean's guilty plea and agreement to cooperate with the prosecutors came October 19, the last day for the President to seek Supreme Court review of the decision ordering him to produce the tapes. Instead of asking the Supreme Court to hear the case, he announced a proposed compromise: Senator John Stennis would listen to the tapes and review a statement of their contents; if verified by Stennis the statement would then be given to the Special Prosecutor and the grand jury. Under an integral part of the proposal, Cox would agree not to litigate further with respect to the nine tapes or to seek additional tapes in the future.

In a news conference the following day, Cox stated his reasons for not accepting the proposal. Edited summaries, he noted, probably would not be admissible as evidence in court. His agreement not to seek additional tapes would prevent WSPF from conducting its investigations thoroughly. And the order to accept the compromise terms, he said, was inconsistent with the pledge of independence he had received from Attorney General Richardson at the time of his appointment.

That evening, October 20, the White House announced the events that came to be known as the "Saturday Night Massacre": President Nixon ordered Attorney General Richardson to dismiss Cox for his refusal to accept the White House proposal; Richardson resigned rather than carry out the order, and Deputy Attorney General William Ruckelshaus was fired for his refusal to obey; finally, Solicitor General Robert Bork, next in seniority at the Justice Department, dismissed Cox as Special Prosecutor. Also on White House orders, agents of the FBI occupied the offices of WSPF, the Attorney General, and the Deputy Attorney General in order to prevent the removal of any documents. WSPF staff members, gathered in their offices, were

informed that they would work henceforth as part of the Justice Department's Criminal Division.

The events leading to Cox's dismissal had been foreshadowed by a number of his contacts with Attorney General Richardson over the previous months. On several occasions Richardson had asked whether particular matters Cox appeared to be investigating were under his jurisdiction and had expressed concern that Cox's inquiries were going into areas not contemplated when WSPF was established. Some of these questions were inherent in the apparent breadth of Cox's charter. Other questions rose from Richardson's own misgivings, and those of White House officials.

The actions which Richardson raised in conversation with Cox included WSPF's possible inquiry into the financing of President Nixon's two homes, its broad letters to several Federal agencies asking their policies and practices in electronic surveillance, the interviewing of a former White House aide who had prepared a controversial plan for intelligence gathering by the executive branch, investigation of wiretaps claimed to be justified by national security, and an inquiry into the handling of campaign contributions by a close friend of the President. In July, because both he and Cox were uneasy about the prospect of a series of politically motivated referrals to WSPF of charges against the President or his Administration, with attendant publicity, Richardson had suggested that the Criminal Division screen all allegations to determine whether they were substantial and fell within WSPF's jurisdiction before sending them on to Cox. Cox quickly rejected this proposal and Richardson did not pursue it. In August, citing the concerns of White House officials that Cox was reaching beyond his charter, Richardson proposed revising the Special Prosecutor's charter to define his jurisdiction with more precise limitations, and appointing a special consultant on national security matters to serve as an expediting intermediary between the Special Prosecutor and agencies from which he was seeking information regarding such matters. Cox felt that it was his own responsibility to determine what matters fell within the terms of his existing charter, and rejected any charter revisions as unnecessary. Cox also disagreed with the idea of a national security consultant because he saw such an official as a possible hindrance rather than an aid to obtaining necessary information.

Richardson also informed Cox of White House positions on various issues, including the production of evidence in response to the Special Prosecutor's requests. Despite their willingness to take independent positions on such legal issues as executive privilege and national security, Richardson and Cox had also made efforts to reach agreement on such issues. During the period just before his resignation and Cox's dismissal, Richardson had made efforts to achieve a compromise

on the question of the Special Prosecutor's access to the subpoenaed tapes.

OCTOBER 20, 1973-AUGUST 9, 1974

The "Saturday Night Massacre" did not halt the work of WSPF, and the prosecutors resumed their grand jury sessions as scheduled the following Tuesday. Bork placed Assistant Attorney General Henry Petersen, head of the Criminal Division, in charge of the investigations WSPF had been conducting. Both men assured the staff that its work would continue with the cooperation of the Justice Department and without interference from the White House. Upon WSPF's request, Judge Sirica issued a protective order to limit access to, and prevent removal of, WSPF files. Despite their anger over Cox's dismissal and their doubts about the future of their office, the staff members, in a series of meetings, decided to continue their work for the time being.

Nevertheless, the dismissal of Cox and the President's refusal to produce the subpoenaed tapes provoked what one White House official called a "firestorm" of public criticism and serious talk of impeachment on Capitol Hill. In an abrupt reversal, the President announced on October 23 that he would comply with the grand jury subpoena and on October 26 that Bork would appoint a new Special Prosecutor who would have "total cooperation from the executive branch." While the President said he would be unwilling to produce additional White House tapes or other evidence that he considered privileged, he placed no restrictions on the new Special Prosecutor's authority to seek such evidence through the courts.

On November 1, the President announced that he would nominate Senator William B. Saxbe as the new Attorney General. Later that day, Acting Attorney General Bork announced his appointment of Leon Jaworski as Special Prosecutor. Jaworski, who was sworn into office November 5, was assured the same jurisdiction and guarantees of independence as Cox, with the additional provision that he could be dismissed, or his jurisdiction limited, only with consent of a bipartisan group of eight Congressional leaders. Three days after taking office, Jaworski told a House subcommittee that the continuity of WSPF operations had been restored and that the office's staff would remain intact.

Meanwhile, a number of bills had been introduced in Congress to provide for judicial appointment or other safeguards of the independence of the Special Prosecutor. In the wake of the "Saturday Night Massacre," many people thought it impossible to assure an independent investigation by anyone appointed solely by the executive branch of Government or subject to dismissal without Con-

gressional approval. Others including Chief Judge Sirica and some of his fellow judges opposed the idea of a court-appointed prosecutor, and Saxbe testified that he had accepted his nomination only on the condition that Jaworski's investigation would remain independent. Jaworski testified that he would welcome any legislation protecting his independence further, but was satisfied with his charter and the assurances he had been given. In mid-November, ruling on a civil suit that challenged the dismissal of Cox, District Judge Gerhard Gesell held that Cox's firing had been illegal. However, noting that Cox had not sought reinstatement, the judge said there was no reason to interfere with Jaworski's tenure. As a result of all these events, Congress abandoned the idea of establishing a special prosecutor's office by legislation.

Less than a week after the President's attorney had told Judge Sirica that the nine subpoenaed tapes would be produced for his examination, another White House lawyer announced that two of the conversations for which tapes had been sought had in fact never been recorded. Shortly thereafter, during a court inquiry into the question of the President's compliance with the subpoena, White House lawyers disclosed that the tape of a third conversation contained a substantial "gap"—a humming sound which obliterated some 18½ minutes of one of the President's conversations—and that dictabelts of the President's recollections of two of the conversations contained shorter gaps. A panel of experts chosen by White House and WSPP lawyers reported in January 1974 that the 18½-minute gap had been caused by a series of deliberate erasures, and that it was impossible to retrieve the original conversation. Judge Sirica thereupon referred the matter to a grand jury. A lengthy investigation, conducted by WSPP and the FBI, concluded that only a small number of people had had the opportunity to make the erasures but was unable to fix criminal responsibility on any particular individual or individuals.

Meanwhile, the task force investigations continued. By the end of 1973, five more corporations—Braniff Airways, Ashland Petroleum Gabon Inc., Gulf Oil Corporation, Phillips Petroleum Company, and Carnation Company—and their responsible officers had pleaded guilty to making corporate contributions to 1972 Presidential campaigns. Former Presidential aide Dwight Chapin had been indicted for making false statements to the grand jury in connection with Segretti's activities. Egil Krogh, Jr., former head of the White House "Plumbers," had entered a guilty plea to conspiring to violate the rights of Dr. Fielding, whose office had been broken into in a vain attempt to obtain Daniel Ellsberg's psychiatric records.

The new year brought additional indictments and guilty pleas. Herbert Porter, a former aide in the President's re-election campaign, pleaded guilty to making false statements in connection with the

original investigation of the Watergate case. Jake Jacobsen, an attorney who had helped milk producer cooperatives make campaign contributions and obtain an increase in milk price supports, was indicted on charges of making false statements to the grand jury. Herbert Kalmbach, the President's personal lawyer and an active campaign fundraiser, pleaded guilty to a felony violation of the Federal Corrupt Practices Act in his fund-raising for candidates in the 1970 Congressional elections and to a charge of promising an ambassadorship to a campaign contributor.

Efforts to obtain additional recordings and other documents from the White House, for use as evidence in various grand jury investigations, continued during the winter of 1973-74. For a short period after Jaworski took office, the White House offered limited cooperation by supplying some of the numerous tapes and documents requested by WSPF over the past four months. In January, however, the President retained as counsel James St. Clair, whose major concern appeared to be protecting him against possible impeachment. The President stopped his initial cooperation with Jaworski, and WSPF requests were soon met by unusual delays and claims that some materials could not be located. Other materials, the President said, were unnecessary to the grand jury investigations. To furnish them would be inconsistent with his constitutional responsibilities.

During the winter, and again in the late spring of 1974, Jaworski met periodically with General Alexander Haig, the President's chief of staff. For the most part, these meetings involved attempts by Jaworski to persuade Haig that the President should provide WSPF with materials it was seeking. Haig complained about particular actions by WSPF staff members, including their intensive questioning of White House witnesses in the grand jury and their efforts to have FBI agents interview White House staff members in connection with the investigation of the 18½-minute tape gap.

On March 1, the grand jury returned an indictment in the Watergate cover-up case of seven men formerly associated with the White House or CRP—Charles Colson, John Ehrlichman, H. R. Haldeman, Robert Mardian, John Mitchell, Kenneth Parkinson, and Gordon Strachan—on charges of conspiracy, obstruction of justice, and, as to some, perjury and false declarations. A week later six men—Bernard Barker, Colson, Felipe DeDiego, Ehrlichman, Gordon Liddy, and Eugenio Martinez—were indicted for conspiring to violate Dr. Fielding's civil rights in connection with the illegal entry of his office, and Ehrlichman was charged in addition with making false statements to the FBI and the grand jury about the case.

The grand jury hearing evidence in the Watergate case concluded that President Nixon had been a participant in the cover-up. However, after extensive legal research in the office, Jaworski concluded that it would be improper to indict an incumbent President for such a crime.

when the House of Representatives' Judiciary Committee had already begun a formal impeachment inquiry. He believed, in addition, that such an indictment would be challenged and ultimately overturned by the Supreme Court, and that the fruitless litigation would delay the trial of the seven cover-up defendants and possibly also temporarily halt the impeachment inquiry. The grand jury then authorized the Special Prosecutor to name President Nixon as an unindicted co-conspirator in the cover-up case. Since this finding was relevant to the impeachment investigation, WSPF asked the grand jury to report to the court all of its evidence relating to the President's alleged involvement in the cover-up, with a recommendation that Judge Sirica forward the report to the House Judiciary Committee. The grand jury did so and by order of Judge Sirica, upheld by the Court of Appeals, the report was delivered to the Committee on March 26.

Discussions had been held between Committee attorneys and WSPF several months before. The prosecutors felt obligated to assist the Committee to the extent that such assistance was legally proper and would not jeopardize WSPF's investigations. In February, with the consent of White House counsel, WSPF had provided the Committee with a list of tapes and documents it had received from the White House, and in March the office supplied a list of those items requested from White House files but not received. As soon as the existence of the grand jury report became public knowledge, the President's counsel agreed to supply the Committee with all materials that had been supplied to the Special Prosecutor, and he subsequently did so. Later in the spring, when the Committee sought access to various records under seal of the court, the Special Prosecutor on most occasions indicated his approval. WSPF's task force heads also met on several occasions with Committee attorneys to provide relevant information. Necessary ground rules protected the secrecy of grand jury proceedings and the confidentiality of WSPF sources of information. The prosecutors suggested what witnesses the Committee should interview on what subjects, and what lines of inquiry were likely to prove fruitless for their purposes.

After months of frustrating efforts to obtain grand jury and trial evidence from the White House, including recordings of Presidential conversations, Jaworski decided that he would have to resort, as his predecessor had, to judicial process. A grand jury subpoena of March 15 had resulted in the production of campaign contribution documents from White House files but had not called for Presidential tapes. At Jaworski's request, Judge Sirica issued a trial subpoena on April 18 in the cover-up case for recordings and documents related to 64 specified Presidential conversations. Unlike the previous subpoenas, which had been issued by the grand juries in connection with their investigations, this one was issued by the court so that WSPF could

prepare adequately for the trial in the Watergate case, then scheduled to begin early in September.

On April 30, two days before the date for compliance with the trial subpoena, the President released to the public edited transcripts of some of the recorded conversations which had been subpoenaed by both the House Committee and WSPF, claiming that "the materials . . . will tell it all." The next day, he formally refused to provide the tapes to Judge Sirica contending that some of the materials covered by the subpoena were protected by executive privilege, that disclosure would be "contrary to the public interest," and that the subpoena was invalid because the tapes would be inadmissible as evidence. His attorneys filed a motion to quash the subpoena.

Jaworski informed Haig and St. Clair a few days later that imminent argument in court by WSPF in an effort to enforce the subpoena would require the statement that the President had been named as an unindicted co-conspirator. Jaworski offered to withdraw the subpoena, thus postponing disclosure of the President's status until later trial proceedings, if the White House supplied voluntarily 16 specified tape recordings that WSPF considered crucial. A few days later, after listening to the tapes in question, the President sent word to Jaworski that his proposed compromise was unacceptable.

During ensuing litigation over the White House motion to quash the subpoena, the President's counsel asserted that the Special Prosecutor, as an employee of the executive branch, lacked authority to seek evidence from the White House by judicial process. This renewed the argument used seven months earlier to justify the dismissal of Cox. In accordance with a promise he had made when appointed, Jaworski immediately informed the chairmen of the Senate Judiciary Committee and House Judiciary Committee of the new challenge to his independence. By resolution the following day, the Senate Committee affirmed its support of Jaworski's right to take the President to court, and urged Attorney General Saxbe to "use all reasonable and appropriate means to guarantee the independence" of the Special Prosecutor. Two days later, Saxbe promised the Committee that he would support WSPF's independence.

On May 20, Judge Sirica denied the President's motion to quash and ordered him to comply with the subpoena. After the President's lawyers announced their decision to appeal this order, Jaworski asked the Supreme Court to consider the matter as soon as possible, bypassing the Court of Appeals in order to avoid unnecessary delays. The Supreme Court agreed to do so, over White House opposition.

After legal briefs and oral arguments had been scheduled in an unusual summer session, the Court ruled unanimously on July 24 that the President must comply with the subpoena. While recognizing for the first time the Constitutional doctrine of executive privilege,

the Court held that "the generalized assertion of privilege must yield to the demonstrated specific need for evidence in a pending criminal trial." The President announced that he would comply with the Court's ruling and with the subpoena.

In the days that followed, the House Judiciary Committee concluded its inquiry by adopting three articles of impeachment to be reported to the full House of Representatives for its consideration.

On August 5, the President released to the public transcripts of portions of recorded conversations held six days after the Watergate break-in. His accompanying statement acknowledged that in the conversations he had ordered steps taken to conceal from the FBI the involvement of White House and campaign officials, and he admitted that he had kept this evidence from his own lawyers and Congressional supporters. On August 9, in the face of overwhelming support for impeachment in the House and almost certain conviction in the Senate, he resigned the Presidency.

The Special Prosecutor's efforts to obtain Watergate trial evidence from President Nixon did not inhibit other WSPF investigations and prosecutions. A trial jury convicted Dwight Chapin of lying about his knowledge of campaign "dirty tricks." Gordon Liddy, one of the men convicted in the original Watergate break-in case, was indicted, tried, and convicted of contempt of Congress, for his refusal to testify before a House committee. The ITT investigations resulted in two convictions: former Attorney General Richard Kleindienst pleaded guilty to giving inaccurate testimony to a Senate Committee, and Lieutenant Governor Ed Reinecke of California, who chose to stand trial, was convicted of perjury.

Investigations of campaign contribution activity also continued during the spring and summer of 1974. Diamond International Corporation, Northrop Corporation, Lehigh Valley Cooperative Farmers, and National By-Products, Inc., all entered guilty pleas to making illegal campaign contributions. The principal officer of Diamond, two officers of Lehigh Valley, and two officers of Northrop pleaded guilty to similar charges. American Ship Building Company and its chairman George Steinbrenner were indicted for making illegal contributions, and Steinbrenner was also charged with conspiracy and obstruction of the grand jury's inquiry. Another official of American Ship Building acknowledged guilt as an accessory to an illegal contribution. A jury in New York found John Mitchell and Maurice Stans, two former members of President Nixon's cabinet, not guilty of charges connected with contributions by financier Robert Vesco, and a federal judge in Minnesota acquitted the First Interceanic Corporation and Dwayne Andreas of illegal contribution charges.

The investigation into the campaign activities of Associated Milk Producers, Inc. (AMPI) resulted in several prosecutions. Former

AMPI officials Harold Nelson and David Parr pleaded guilty to conspiracy charges, with Nelson also acknowledging his part in a conspiracy to make an illegal payment to a public official. AMPI entered a guilty plea to charges of conspiracy and making five corporate contributions. The perjury charge against attorney Jake Jacobsen had been dismissed on technical grounds, but he pleaded guilty to a later charge of making illegal payments to a public official. The same indictment charged former Treasury Secretary John Connally with accepting such payments and with conspiracy and perjury. Later in the summer of 1974, Norman Sherman and John Valentine pleaded guilty to aiding and abetting unlawful AMPI contributions.

While WSPF's subpoena of White House tapes for the Watergate trial was pending before Judge Sirica, Judge Gerhard Gesell was hearing pretrial motions in the Fielding break-in case. Because of doubts about the legal effect of a previous grant of immunity to defendant Felipe DeDiego, the judge dismissed the charges against him. Judge Gesell also ruled against a defense argument that the entry into Dr. Fielding's office had been justified by considerations of national security. Shortly after this ruling, one of the defendants, former White House aide Charles Colson, pleaded guilty to obstructing justice in the federal criminal case brought against Daniel Ellsberg after his public release of the Pentagon Papers. Colson admitted that White House efforts to discredit Ellsberg by public release of derogatory information were intended to interfere with his fair trial. As a result of this plea and his agreement to disclose what he knew about matters under the Special Prosecutor's jurisdiction, the charges against Colson in the Watergate case and the original charges against him in the Fielding break-in case were dropped. The break-in trial began June 26 and ended July 12 with the convictions of the four remaining defendants—Bernard Barker, John Ehrlichman, Gordon Liddy, and Eugenio Martinez.

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The Nixon resignation presented WSPF with an immediate question: should the former President be prosecuted as a private citizen for whatever crimes he might have committed while in office? Jaworski, after announcing that he had reached no agreement or understanding with anyone about the former President's possible prosecution, said he intended to defer a decision on whether to seek any indictments. The WSPF staff needed time to analyze all the relevant factors. But, on September 8, before the Special Prosecutor had decided whether to seek an indictment, President Ford pardoned his predecessor for any and all Federal crimes he might have committed while President.

President Nixon's resignation also raised questions of access to the White House papers and recordings which WSPF needed in its investigations of possible criminal conduct during his Administration. President Ford's counsel assured WSPF on August 15 that the former President's files would be kept in White House custody until their ownership had been resolved. However, when he announced the pardon September 8, President Ford also revealed an agreement—made without any prior notice to the Special Prosecutor—giving the former President control over access to the files, which would be kept in a Government installation near the Nixon residence in California. President Ford based his position on a Justice Department opinion that the former President was the legal owner of the materials, and on his belief that their physical security could be assured by maintaining them in Government custody. The Special Prosecutor disagreed with the President's view of the situation and suggested that he might challenge the September 8 agreement in court. Resulting discussions among WSPF, Justice Department, and White House officials produced an agreement whereby the Nixon files would remain in White House custody pending review of the question of WSPF's access to them.

On October 17, the former President filed a lawsuit to compel enforcement of the September 8 agreement giving him control over access to his White House files. The court issued a temporary restraining order prohibiting access to the materials without the consent of attorneys for both the former President and President Ford. On November 9, based on President Ford's determination that the needs of justice required direct access to the Nixon files by the Special Prosecutor's office, the President's counsel, along with the directors of the General Services Administration and the Secret Service, agreed in writing with the Special Prosecutor on procedures for direct access by WSPF. The Special Prosecutor's office then began discussions with former President Nixon's counsel to obtain his consent to this agreement.

Because of the needs of all parties to prepare adequately for trial, the Watergate cover-up trial was postponed from September 9 to October 1 pursuant to a suggestion from the Court of Appeals to Judge Sirica. Doubts about the effect on the prosecution's case of grants of immunity to defendant Gordon Strachan led to his severance from the trial.⁵ On October 12, shortly after the jury had been sequestered, Special Prosecutor Jaworski announced that he would resign as of October 26, stating that the bulk of the office's work had been completed. He also announced that he had decided not to challenge President Ford's pardon of former President Nixon in

⁵ Charges against Strachan were dismissed on the Special Prosecutor's motion March 10, 1975.

the courts because he did not believe such a challenge would have any chance of prevailing. Thus WSPF ended its consideration of the former President as a possible defendant. Jaworski was succeeded October 26 by Henry S. Ruth, Jr., who had served as deputy to both of the previous Special Prosecutors.

During the months following President Nixon's resignation, WSPF obtained additional indictments and convictions. George Steinbrenner and the American Ship Building Company pleaded guilty to charges of conspiracy and making an illegal campaign contribution, and "DKI for '74," a committee supporting the re-election of Senator Daniel Inouye, pleaded guilty to failing to report a contribution received from Steinbrenner. Guilty pleas for illegal contributions were entered by LBC&W, Inc. and its principal officer, Greyhound Corporation, Ashland Oil, Inc., Ratrie, Robbins, and Schweitzer, Inc. and its principal officers, and the principal officer of HMS Electric Corporation. Tim Babcock, an executive of Occidental Petroleum, Inc. and formerly Governor of Montana, pleaded guilty to making a campaign contribution in another person's name. Oklahoma lawyer Stuart Russell and Minnesota lawyer Jack Chestnut were both indicted in connection with milk-producer contribution activities. Jack Gleason and Harry Dent, former White House aides, pleaded guilty to violating the Federal Corrupt Practices Act in their fund-raising for the 1970 Congressional elections. Edward Morgan, a former Deputy Counsel in the White House, pleaded guilty to conspiracy to defraud the Government in connection with an income tax deduction taken by former President Nixon.

Most of these actions occurred as the Watergate cover-up trial was taking place during the autumn of 1974 in Judge Sirica's courtroom. Efforts to obtain former President Nixon's testimony at the trial were frustrated when three court-appointed physicians reported that his serious illness prevented his testimony for several months. After a three-month trial, defendants Ehrlichman, Haldeman, Mardian and Mitchell were found guilty by the jury, and defendant Parkinson was acquitted.

Early in 1975, WSPF's staff began a steady reduction as investigations and prosecutions were completed, but office business continued through the spring and summer. Los Angeles lawyer Frank DeMarco and Chicago book dealer and appraiser Ralph Newman were indicted on conspiracy and other charges related to their roles in the preparation of former President Nixon's income tax returns. Former Secretary of Commerce Maurice Stans, who had headed the Finance Committee to Re-Elect the President, pleaded guilty to three violations of the Federal Election Campaign Act's reporting requirements and to two violations of accepting corporate contributions. Former Treasury Secretary Connally was found not guilty by a jury on charges of accepting illegal payments, and the remaining charges

against him were dismissed. A New York City jury convicted Jack Chestnut of a felony for aiding and abetting an illegal milk-producer contribution⁶ and a San Antonio, Texas, jury convicted Stuart Russell of three felonies for conspiracy and aiding and abetting other dairy industry contributions. Former Congressman Wendell Wyatt pleaded guilty to a reporting violation under the Federal Election Campaign Act.

Discussions with the former President's counsel about WSPF access to Nixon Administration tapes and documents resulted in an understanding that permitted the prosecutors to obtain relevant evidence. Beginning in February 1975, with an index prepared by Government archivists, the prosecutors designated the particular files they wanted searched for documents and recordings related to specified investigations. The file searches were conducted by archivists under the supervision of President Ford's counsel; former President Nixon's attorney reviewed all requested recordings of Presidential conversations and provided copies of those which might be pertinent to WSPF's investigations. Between February and June, WSPF obtained numerous documents and tapes generated in the White House during the Nixon Administration. On June 23 and 24, after negotiations with the former President's counsel, several WSPF attorneys and two members of the grand jury took Nixon's testimony under oath near his California residence.

A considerable portion of the prosecutors' work in 1975 involved the numerous appeals that followed convictions at trial and other court actions. Matters on appeal included the convictions in the 1973 Watergate trial, the later Watergate cover-up trial, the Fielding break-in trial, the trials of Dwight Chapin, Ed Reinecke, and Stuart Russell, and the sentence imposed on Tim Babcock. The prosecutors unsuccessfully sought reversal of a court order moving the trials of Frank DeMarco and Ralph Newman to two separate cities and intervened in litigation to oppose Mr. Nixon's contention that the Presidential Recordings and Materials Preservation Act of 1974 deprived him unconstitutionally of his Presidential papers. The appellate process in some cases is expected to extend at least through 1976.

The grand juries which had heard evidence obtained by WSPF were dismissed when their terms expired. The first, originally empaneled on June 5, 1972, and extended by legislation was dismissed on December 4, 1974. After having sat for the standard 18-month term, the second was dismissed February 12, 1975, and the third, July 3, 1975.

⁶ After the WSPF investigation and grand jury indictment, the office of the United States Attorney for the Southern District of New York conducted the trial at WSPF's request.

Policies and Procedures for Investigation and Prosecution

BEGINNING INVESTIGATIONS

The Special Prosecutor's new charter covered a number of matters already under investigation by other agencies when Archibald Cox took office in May 1973. The U.S. Attorney's office for the District of Columbia had been handling the Watergate break-in case and the cover-up allegations. The Fielding break-in had come to its attention in the course of that inquiry, as had possible violations of campaign financing and reporting laws which it had referred to the Justice Department's Criminal Division. That Division had also begun inquiries into possible perjury at the Senate confirmation hearings of Richard Kleindienst to be Attorney General. The hearings had been reopened earlier to explore the possible relationship between the alleged commitment of International Telephone and Telegraph Corporation to help finance the 1972 Republican convention and the Justice Department's settlement of an antitrust suit against the corporation. And a Federal grand jury in the Middle District of Florida had indicted Donald Segretti on May 4 for criminal acts in his "dirty tricks" operation.

The creation of WSPF centralized the investigation of these related allegations, many of which involved the same individuals, into a unified single agency. However, the Special Prosecutor realized that an undetermined volume of matters not yet investigated would also fall within WSPF's jurisdiction. Thus, the office organization developed into five task forces and the investigative category of each was sufficiently broad to include assumption of existing investigations and categories of responsibility in the anticipated general areas of inquiry. Each task force began its work by giving attention to the particular matters it had been created to investigate. But as time passed and additional possible violations of law came to the office's attention most of the task forces undertook new inquiries, which in most cases bore some relation to the matters they had been established originally to investigate.

The task force initially assigned to look into the Fielding break-in, for example, eventually examined numerous allegations against the "Plumbers" and other White House staff for illegal activities in generating electronic surveillance and IRS harassment of many citizens. In 1974, partly because it had been investigating possible violations of law relating to the Internal Revenue Service, it was assigned to look into possible violations in connection with President Nixon's taxes. The "Dirty Tricks" Task Force, initially assigned the Segretti case, eventually investigated many allegations of similar conduct in connection with the 1972 campaigns of both Republican and Democratic candidates. The Campaign Contributions Task Force began its inquiries with a series of allegations about illegal corporate contributions and *quid pro quo* relationships between contributions and Administration actions, and ultimately came to investigate hundreds of such allegations. It also undertook the investigation of charges relating to the campaign activities of Associated Milk Producers, Inc. The ITT investigation, which had begun by focusing on the antitrust settlement and possible perjury at the Kleindienst hearings, eventually included other allegations relating to ITT, such as the Securities and Exchange Commission's handling of an investigation of the corporation and an Internal Revenue Service ruling on the merger of ITT and another corporation. The only task force whose initial responsibilities were not enlarged later was the one handling the Watergate cover-up case, although its work came to include inquiries into some matters ancillary to that case, such as the 18½-minute gap in one of the White House tapes.

The information with which WSPF began its investigations came from many sources: the original prosecutors' summary memorandum, grand jury and trial testimony, FBI investigative reports, Congressional hearing transcripts, depositions in civil suits, and newspaper and magazine articles. How much information each task force received at its start or at the start of any later investigation depended on how far investigations by others had progressed; a few matters were well developed by the time WSPF began its work, while many others were unsubstantiated charges.

The Watergate cover-up case had progressed substantially by the time WSPF took it over. The Assistant U.S. Attorneys who had originally handled the matter worked with WSPF attorneys on the investigation and briefed Cox and his staff on their findings. At Cox's request, their files were moved into the Special Prosecutor's office. In its dealings with the original prosecutors, WSPF was faced with two conflicting needs: to obtain all the information developed by their investigation, as well as ensure its aggressive continuity, and at the same time to avoid any appearance that the Special Prosecutor's investigation was dependent upon theirs, or limited merely to reviewing their work. The conflict was resolved when the

original investigators withdrew from the investigation on June 29 and returned to the U.S. Attorney's office. During the 1-month transition period, WSPF personnel had sat in on their meetings with witnesses and attorneys and their presentations to the grand jury, and all decisions in the Watergate investigation had been submitted to Cox for his approval.

In contrast to the Watergate Task Force, which took over responsibility after substantial investigative work had been done, the task force concerned with campaign financing began with about 70 different matters that appeared suspicious but about which little was known. To an extent greater than in the other task forces, its staff had to make difficult choices about which investigations should be given priority. The possible illegal acts fell into two broad categories: (a) campaign law violations resulting from illegal contributions by corporations and unions, and failure to comply with contribution reporting requirements; and (b) bribery and other violations grouped into a so-called *quid pro quo* category, i.e., allegations of a dependent relationship between contributions and Government decisions by the Administration. The campaign law allegations had more substance and more initial evidence with which to begin. In addition, since investigation of these would commence with the larger contributions, they also would seem to possess the greater potential for a *quid pro quo* relationship.

Accordingly, the campaign financing task force focused originally on many political contributions shown on various available lists of contributors. The task force attorneys realized that few such investigations had been successful in the past and felt that time demands dictated a course that would generate witness cooperation in order to break the barrier of prior witness silence. They also knew that locating the source of funds that large organizations used for contributions might be an impossible task. The Special Prosecutor soon announced his policy to afford prosecutorial consideration in the form of reduced charges against those illegal contributors who volunteered information to WSPF. The subsequent early disclosure by several corporations that they had made such contributions, prompted in part by their awareness that such activity was being investigated, helped the task force in its subsequent dealings with witnesses who realized that full-scale investigations were actually in progress. Eventually the task force was able to investigate several hundred different allegations relating to campaign financing, including *quid pro quo* matters, although most of the inquiries failed to develop evidence that would warrant criminal charges.

Sometimes facts obtained by WSPF in the course of its own investigations or from other sources would point to the possibility of criminal conduct in areas either outside WSPF's jurisdiction or peripheral to its chief concerns. The Special Prosecutor's charter gave him

broad jurisdiction to investigate and prosecute "all offenses arising out of the 1972 Presidential election for which the Special Prosecutor deems it necessary and appropriate to assume responsibility, allegations involving the President, members of the White House staff, or Presidential appointees," and other matters. But for WSPF to investigate every allegation falling within those terms would have spread the office's resources too thinly to achieve significant results, and it seemed unnecessary for WSPF to look into matters which established law-enforcement agencies could handle without apparent risk of the higher-level interference which had led to the Special Prosecutor's appointment. Accordingly, some relatively routine matters were referred by mutual agreement to the Criminal Division of the Justice Department, the Internal Revenue Service, or other agencies, after initial inquiries had shown that there was no reason, other than a literal reading of the Special Prosecutor's charter, for WSPF to handle them.

After an inquiry into the role the FBI had played in the Watergate investigation prior to his appointment, and in order to take advantage of the Bureau's nationwide organization and facilities, Cox decided to request the continued assistance of the Bureau agents who had worked on the Watergate case. A decision not to establish his own investigative staff was made after Cox had determined that the FBI agents doing the day-to-day work in the Watergate case had apparently done conscientious jobs. The Special Prosecutor agreed with the Attorney General that the WSPF requests for investigative help in all task force areas would be sent directly to the FBI and the Bureau reports would come directly to WSPF, bypassing the Attorney General's office. Although the Bureau was not involved in some of the investigations WSPF conducted, and played a small part in others, its work in still others was extensive, involving in the aggregate 58 of its 59 field offices in the United States and several of its "legal attache" offices overseas. Some investigative help also came from the Internal Revenue Service, which audited financial records and assigned agents to work with WSPF, primarily on campaign contributions matters.

At the outset, arrangements were made for the Justice Department to bring to WSPF's attention any information it obtained that might bear on matters under WSPF's jurisdiction. Later, appropriate arrangements for disclosure of tax information were made with IRS in connection with campaign financing activities. The Senate Select Committee made available some of the information its staff had obtained except that received under grants of immunity from prosecution and testimony given in executive sessions of the Committee. Individual Members of Congress provided information from time to time as it was developed in investigations by their staffs or committees. In addition to these official sources, WSPF received numerous letters

and phone calls from private citizens, many of them anonymous, with information they felt bore on matters under its jurisdiction. These unsolicited "tips" ranged widely in value and all received attention, but most of them either provided no facts that could be checked or provided facts which, when checked, left no reason to believe a criminal offense had been committed. People with actual knowledge of matters under investigation usually had to be invited to tell the prosecutors what they knew; not surprisingly, many of those who knew enough to provide useful information and realized the value of their knowledge were unwilling to come forward because of their own possible involvement in criminal or otherwise questionable activities, or because they distrusted the prosecutors' motives.

THE INVESTIGATIVE PROCESS

In conducting its investigations, WSPF used most of the approaches and techniques commonly used in Federal investigations of "white-collar" and organized crime. These kinds of crime, unlike the "street crimes" which receive more public and official attention, are effectively invisible. They involve conspiracies whose facts are known only to their participants, all of whom have good reasons to maintain secrecy; and their individual victims, if any, usually do not realize that they have been victimized. Thus, the information that investigators and prosecutors need in such cases must usually come from people who were themselves involved in the criminal activities under inquiry. Generally this information can come from only three possible sources: the statements of insiders or participants who for some reason are willing to disclose their knowledge, documents which corroborate such statements or provide further information, and the fruits of surveillance, including court-authorized electronic eavesdropping. The first of these sources is especially important because it often leads to the other two. Documents have to be identified, or their meaning explained, by witnesses who must be persuaded to be helpful. Surveillance, of course, can be undertaken only when the investigator knows what or whom to watch, and he can normally learn this only from witnesses or documents; electronic surveillance requires a warrant which must be based on such information.

As an additional characteristic in "white-collar" investigations of Government officials, corporate officers, and others highly placed in organizations, the subjects frequently can "track" the progress of the inquiry. For example, corporate or agency employees interviewed by prosecutors are sometimes accompanied by lawyers who represent their employers and whose presence may therefore inhibit the witnesses from being cooperative or truthful. In other cases, such employees may report back to their supervisors on the interviews. These condi-

tions make it easier for the officials of any organization to tailor their own accounts of events to what they know the prosecutors know, and to conceal criminal conduct more effectively if they are so inclined.

The need for information from "insiders" and the subjects' ability to keep track of the investigations were elements which WSPF cases had in common with the "white-collar" and organized crime cases other Federal prosecutors handle. But WSPF's investigations were also affected by conditions that are not ordinarily as significant, if they appear at all, in other cases involving "white-collar" crime.

—Much of the evidence needed for investigations and prosecutions was held by the White House and proved exceedingly difficult to obtain. Tapes and documents relating to Presidential conversations were obtained only after extensive litigation, and production of other documents was delayed and uncertain. As a result, in the Watergate investigation the prosecutors initially were forced to unravel conflicting statements of witnesses to a greater extent than they would have otherwise, and to devote considerable time to litigation over tape recordings. In other investigations, difficulties in obtaining evidence from the White House delayed the full examination of such evidence until relatively late in WSPF's lifetime. Had such evidence been available sooner, some investigations might have been closed earlier and others might have resulted in the filing of additional charges. On the other hand, public attention to WSPF's efforts to obtain documents might have made their wholesale destruction less likely. And, of course, the tape recordings of Presidential conversations, when they were finally obtained, were extraordinarily valuable as evidence corroborating what witnesses had told the prosecutors.

—The public importance of most of the matters WSPF investigated meant that others, notably committees of Congress and plaintiffs in civil suits, had interests as strong and legitimate as WSPF's in uncovering the same facts for their own different purposes. Although other criminal investigators and prosecutors, both State and Federal, deferred to WSPF in cases where they had been looking into the same matters, this kind of deference could not be expected of Congressional committees and private litigants, whose purposes might be harmed by delaying their own inquiries. In one respect, these parallel inquiries were helpful, as they provided valuable information to the prosecutors, especially as WSPF's work was beginning. In other respects, they may have unavoidably hindered the prosecutors' inquiries by inhibiting some witnesses from telling the prosecutors what they knew. Prior public testimony of key witnesses may have helped other witnesses and suspects fabricate their own versions of events. Some people may have feared that disclosures to WSPF would lead to their being contacted by other investigators. People who had testified in self-serving ways in other forums may have been inhibited from giving WSPF more accurate information because of their prior statements. And the

credibility of prosecution witnesses at trial could sometimes be challenged by pointing to inconsistencies in their statements to other investigators.

—The interest of the news media in WSPF's work and the cases it produced created potential problems. Some witnesses may have been reluctant to provide information for fear that they would find themselves testifying in a celebrated trial or portrayed in the press as having been involved in a major scandal; their chances of remaining anonymous were considerably less than those of most witnesses in more traditional investigations. Furthermore, press attention to WSPF's work created ever-present dangers that errors in the conduct of investigations, including "leaks" of information, might be exploited by people who wanted to halt WSPF's work. There was the additional and unusual problem of disclosures by people associated with witnesses and potential defendants, for the purpose of generating publicity for tactical advantage or to bring public pressure on WSPF to take a particular action. However, publicity may also have worked to WSPF's advantage insofar as it may have influenced some witnesses to appear cooperative by letting the prosecutors interview them, furnishing office calendars and similar records, and testifying before the grand jury. While at times cooperation was more apparent than real, the access it provided to such people, whose hostility otherwise might have engendered a lack of cooperation, did contribute to the resolution of matters being investigated.

—Unlike most prosecuting agencies, WSPF required continuous public support for its work. Political pressures had led to the creation of the office, and other political pressures could destroy it. Its investigations jeopardized some of the most powerful people in the country, who could be expected to try to protect themselves and their associates by publicly challenging and encouraging others to challenge WSPF's impartiality and the motives of the people who were providing information to the prosecutors. For example, the credibility of John Dean, one of the most important witnesses in the Watergate cover-up case, was attacked publicly by high officials during the course of his cooperation with WSPF. The prospect of such denunciation, or simply of incurring the hostility of such powerful people, may have affected other witnesses' decisions about telling the prosecutors what they knew.

The need to retain public support probably made WSPF more cautious and restrained in its methods than a prosecuting agency would normally be in an investigation. For example, WSPF never used "planted" informants or electronic surveillance, although such techniques, often used in "white-collar" and organized crime investigations, might have been productive on a few occasions. The use of such techniques, though legally proper, might have damaged WSPF's credibility with the public whose support it needed, since they were at least

superficially comparable with the similar techniques used illegally in the criminal conspiracies the office was investigating.

As noted above, apart from the significant differences dictated by these unique circumstances, WSPF conducted its investigations in ways similar to those used by Federal prosecutors in "white-collar" and organized crime cases. Because of the large numbers of people involved and the complexity of the cases, this process is usually far more laborious and time-consuming than the investigation of most other types of crime. Thus, while experience, instinct, and luck play a part, such investigations are most often characterized by careful planning, ongoing strategic decisions, persistence, attention to detail, the amassing of large quantities of information, and the investigators' ability to obtain information from people who often have an interest in withholding it. The way in which witnesses are contacted, and their cooperation is sought and maintained, becomes an important factor in such cases.

WSPF contacts with witnesses, as in most Federal investigations, occurred in three basic settings: interviews by agents of the FBI pursuant to WSPF requests for assistance, interviews by attorneys in WSPF's offices, and grand jury appearances. Which of these vehicles was used in any particular instance depended on a variety of possible considerations.

When a bare allegation was received, showing a possible violation of criminal law but lacking specifics, the FBI was often asked to make initial inquiries through the appropriate field office to obtain further details; its findings would be used in deciding whether to continue the investigation. The FBI was also asked to pursue leads arising from witnesses' statements to the prosecutors or the grand jury, and to seek corroboration of material facts supplied by some witnesses. For example, agents checked telephone, hotel, and airline records to learn whether they supported witnesses' accounts of phone calls and travel. In some cases, the FBI was also asked to provide investigative help between the time of indictment and trial, when prosecutors cannot use the grand jury process for investigative purposes.

In some nationwide investigations, such as that of dairy industry campaign activities, the initial information available strongly suggested that criminal activity had occurred and that the participants were endeavoring to prevent discovery of the full facts. It was important that such inquiries be centrally conducted, so that each person contacting witnesses would be as fully informed as possible about every document, every witness' prior statements, and the attitudes and propensities of each potential witness. Here, too, immediate follow-up and selective use of the grand jury can become crucial. In such situations, prosecutors normally assume the interrogator's role, with only selective use of another law enforcement agency such as the FBI. It is important for the prosecutor, and perhaps ultimately the

grand jury, to hear witnesses directly and question them with knowledge of all information already available. This contrasts with the normal FBI procedure of having witnesses interviewed by agents stationed in the field offices covering the respective areas where they reside. In addition, the FBI lacks the subpoena power available to the prosecutor through the grand jury. Accordingly, in some of the nationwide inquiries WSPF attorneys interviewed most of the witnesses themselves rather than asking the FBI to do so. In a few instances, most notably the Watergate investigation and the inquiry into the 18½ minute tape gap, where most witnesses resided in the Washington area, the same group of FBI agents worked continuously and closely with WSPF attorneys who used all available settings for questioning witnesses.

When the prosecutors learned, from the FBI or other sources, facts indicating that a witness might have information relevant to an investigation, they commonly interviewed such a witness in WSPF's offices to determine whether the facts warranted further investigation. Office interviews were also used in pursuit of investigative leads which seemed likely to have value in eventual prosecutions. Another function of office interviews was in preparing cooperative witnesses for grand jury or trial testimony. Office interviews also had value in letting some uncooperative witnesses know how much the prosecutors had learned about their activities; this knowledge might affect their attitude towards cooperation.

When appropriate, people interviewed by WSPF attorneys were informed of their rights in connection with the interview—that they were not required to participate in the interview, that they could end the conversation at any time, and that they could consult a lawyer and bring him with them (as most did). These warnings resemble those required by the Supreme Court's decision in *Miranda v. Arizona* when the police arrest someone suspected of a crime. While the law only requires that such warnings be given in certain situations, the prosecutors generally tried to err on the side of caution by giving the warnings even when not legally required to do so. When an investigation had progressed substantially, the warnings were almost always given to each witness.

A witness was called to appear before the grand jury if the prosecutors believed that such an appearance was the most reliable method of obtaining, or attempting to obtain, truthful testimony. Apart from the basic purpose of bringing relevant evidence to the grand jury's attention, grand jury appearances produced a verbatim record of the witness' sworn testimony which could serve as a basis for further inquiries or could be used, if necessary, to challenge any later inconsistent statement. In addition, since deliberately false testimony could lead to perjury charges, grand jury witnesses had a strong incentive to be truthful.

A grand jury appearance also gave the prosecutors a chance to see what kind of impression a witness made on a group of citizens similar to those who would serve on a trial jury—his demeanor, nervousness, certainty or uncertainty of recollection, and general credibility. Although most grand jury witnesses appeared at the prosecutor's request or under subpoena, others did so at their own request. Any potential defendant who wanted to give the grand jury his version of the facts was invited to do so, whether or not the prosecutors would have called for his testimony on their own.

When appropriate, before giving testimony, grand jury witnesses were advised of their rights—to decline to answer any question on grounds of self-incrimination, to have an attorney, and to consult with him outside the grand jury room at any time during the questioning. As in all Federal grand jury proceedings, witnesses were not entitled to have their lawyers physically present in the grand jury room while testifying. Any grand jury witness who informed the prosecutors that he would invoke his Fifth Amendment privilege against self-incrimination regarding all substantive questions was excused from testifying, provided that his lawyer informed the prosecutors in writing of his position. The grand jury would not be informed of the witness' intent to assert his privilege unless its members specifically insisted upon his appearance; this happened rarely.

The prosecutors worked with some witnesses in all three ways—first having an FBI agent interview them, later interviewing them in WSPF's offices, then questioning them under oath before a grand jury—and with other witnesses in only one or two. Any such contacts, in any investigation, involve a danger of letting the witness, particularly a hostile one, learn what the prosecutors already know and what more they want to find out. Thus a witness may obtain more information in an interview or grand jury appearance than he provides. If he is a potential defendant or wants to protect one, such information can help him fashion a version of the facts which will sidetrack the prosecutors' investigation without being so implausible as to raise suspicions. For example, in an office interview the prosecutors might ask a witness what had happened at a particular meeting he had attended. Realizing that they knew of that meeting, the witness could feign forgetfulness and avoid telling them anything of value. After the interview, he would be able to "consult his records," and perhaps also consult others who had attended the same meeting, and concoct an account that would work to his or their advantage.

Sometimes a witness would decline a request to be interviewed or to testify before the grand jury because he believed the information he might provide could be used as evidence against him in a later prosecution. Such a situation, which prosecutors commonly face, requires a determination whether to give assurances to the witness in return for his cooperation. Some witnesses were satisfied merely

to know that the prosecutors did not view them as potential defendants and had no present reason to expect to charge them. Others insisted on being assured that their statements in office interviews would not be repeated later as direct evidence against them, although the witnesses understood that investigation of others based on the office statements might result in the obtaining of evidence that could be used against the cooperating witness. In some instances, witnesses insisted on what amounted to informal use immunity—a promise that neither their statements nor evidence obtained as a result of them would be used against them. And in rare instances, witnesses would insist that WSPF apply to the District Court for a formal grant of use immunity.

About 30 of the hundreds of witnesses who were interviewed by the prosecutors or testified before the grand jury received complete use immunity, either formal or informal, and only a few of them might have been prosecuted otherwise. The prosecutors tried to avoid giving such immunity when they could not be sure how their cases would develop. If the assurances given were too broad, a valid future prosecution might be foreclosed; if they were not broad enough, valuable information might not be obtained from the witnesses. In many instances, the prosecutors had little basis to choose which of these risks to run. In order to determine as accurately as possible the appropriateness of making any commitment to a witness who requested one, the prosecutors often followed the common practice of asking the witness' counsel to make an offer of proof—a statement in broad hypothetical terms of what the witness would be able to tell them. This statement gave them a better basis for deciding whether the witness' information was important enough to their overall investigation to justify whatever assurances he was seeking.

Another reason for the prosecutors' conservative approach to immunity, particularly as to important Government agency actions, was the irrelevance of the practice, often followed in organized crime cases, of using a person's rank in an organization as a principal standard in deciding whether to immunize him—for example, giving immunity to street-level participants in criminal activity in order to obtain their testimony against the major figures. This practice, which has many variations in individual cases, makes sense in dealing with members of continuing hierachial organizations whose major activity is crime. But a "low level" employee in an organization like the White House staff is a relative concept—anyone in such a position has a great deal of power. It was felt that they should take some responsibility for their actions; "following orders" should not be an absolute defense for criminal conduct.

When a witness seeking immunity appeared to bear major responsibility for criminal conduct, and the prosecutors believed they had enough evidence to obtain his conviction, they rejected the choice of

immunity and instead pursued a course of plea bargaining. This involved telling the witness the entire range of charges he might some day face, and offering to reduce this total range in return for his plea of guilty to an appropriate charge and cooperation with the investigators. This course would provide the prosecutors with the guilty man's future testimony and make him more credible as a trial witness against other defendants than he would be as a man who had traded his testimony for complete immunity from his own guilt. Moreover, plea bargaining is probably a better basis than a grant of immunity for assuring that a witness does not fabricate information he thinks the prosecutors "want to hear" in his offer of proof, since he would expect the offer to result only in a negotiated guilty plea rather than in his freedom. Most important, it avoided the unfairness of permitting one guilty of serious misconduct to avoid all liability.

The use of plea bargaining rather than immunity involved delays in some investigations—instead of immunizing a witness and getting his immediate cooperation, the prosecutors had to negotiate with his counsel over an appropriate charge to which he would plead guilty before his testimony would become available. But the result of the practice was that no one whom the prosecutors could prove had major responsibility for criminal conduct was immunized on WSPF's initiative.

In giving assurance to witnesses in return for their cooperation, whether those assurances were limited to the nonuse of their actual statements as evidence against them, or as broad as a formal or informal grant of immunity, or embodied in a plea agreement, the prosecutors always reserved the right to cancel the agreement or to bring charges of perjury or false statements to criminal investigators if a witness lied to them. While witnesses often failed to provide as much evidence as the prosecutors might have expected from them, none were charged with such offenses.

When an investigation resulted in a finding that no criminal activities could be detected, it was closed without the filing of a formal memorandum. This occurred most often in the campaign contributions area where by far the largest number of WSPF's investigations occurred and where the prosecutors started with the least information. Where the initial inquiry showed possible criminal activity but little promise of successful identification of the particular individuals involved, closing was also at the task force level, sometimes with the filing of a memorandum indicating the reasons for the closing. Copies of such memoranda were sent to the Deputy Special Prosecutor, through whom all investigative requests to other agencies had been routed. In task forces that handled relatively few separate investigations, matters showing little promise were normally closed through consultation with the task force leader, the Deputy Special Prosecutor, and on many occasions the Special Prosecutor. No major

matter that had produced significant evidence of criminality short of prosecution potential was closed without the approval of the Special Prosecutor or his Deputy. A closing was never final; the investigation could always be reopened (subject to the statute of limitations) if new evidence turned up. But in practice this rarely occurred.

The day-to-day work in investigations was done within WSPF's five task forces. Each task force leader had considerable discretion in choosing investigative techniques and strategy. Progress, priorities, and thoroughness of the task forces were monitored by the Special Prosecutor and his Deputy through regular meetings with each task force's lawyers and other meetings with the heads of all task forces. These meetings were a means of maintaining communications among task forces, shifting manpower as needs changed, and keeping the Special Prosecutor and his Deputy informed of the course of all investigations. In the early months of WSPF's work, it was routine for each task force to inform his colleagues in other task forces of the witnesses who were coming in to be interviewed or to appear before the grand jury, so that each investigating attorney who needed to talk with a particular witness would have a chance to do so. This kind of coordination became less frequent as time passed and the investigations became more distinct from one another. However, grand jury time continued to be scheduled centrally and decisions about bringing charges or accepting plea bargains were cleared with all the task forces that had been investigating activities or persons relative to the proposed course of action. People who pleaded guilty to charges and agreed to disclose to WSPF what they knew about all matters under investigation were interviewed by members of each task force to find out what they could add to the evidence that each was gathering. This coordination process involved serious problems among the task forces. Each had its own priorities; each had its demands for witness interview timing and precedence; and each relevant investigating group had its own views of the propriety of a proposed immunity, a proposed plea of guilty or a proposed initial criminal charge against a subject.

If an investigation led to findings that might form the basis of criminal charges against anyone, the prosecutors continued their inquiries with a view to shaping the case they expected to prove against such an individual. This involved obtaining the most accurate, complete, and detailed information they could get on the events which constituted the crime, using counsel's office for legal research to determine what charges the evidence most clearly described, and making a charging decision in consultation with others in the office and with the Special Prosecutor's approval.

CHARGING AND DISPOSING OF CASES

Fulfilling the prosecutor's obligation to investigate all cases fully and fairly requires not only thorough investigation and analysis of the facts, but also the exercise of care and judgment in deciding what, if any, criminal charges should be brought. In deciding whether to bring charges, prosecutors often take a great many factors into account. While there were similarities in the processes and criteria by which the various WSPF task forces made their recommendations and the Special Prosecutor made his decisions, there were also substantial and important differences in the ways WSPF handled each of the cases within its jurisdiction. Among other variables, these differences resulted from the unique facts of each case, the varying laws applicable to the conduct in question, the nature and quality of the evidence available to the prosecution, and the differing circumstances of each potential defendant. To discuss these factors fully would require the unfair disclosure of much confidential information obtained during the office's investigations. Such disclosure might seriously violate both the rights of those who were not charged with any crime and the legal and ethical obligations of prosecutors to protect the rights of the accused. Hence, it must be noted that the discussions of investigating, charging, prosecuting, and plea-bargaining practices contained in this report can in no sense be interpreted as applying fully to any single case or describing completely the way a particular case was handled by WSPF. More to the point, they cannot be considered as statements of uniform policy on the part of WSPF, the Department of Justice, or any other prosecuting entity.

The initiative for criminal charges in "white-collar" cases typically comes from prosecutors rather than from victims making complaints. During and after the evidence-gathering process, the decision normally involves legal research into the applicability of particular criminal statutes to the facts and the development of a theory of the case to determine which violations are most clearly demonstrated by the evidence and what kind of additional evidence is required. The office review undertaken before seeking an indictment in the Fielding break-in case provides an example of this process. The evidence showed that the potential defendants had authorized, planned, and conducted a surreptitious entry into Dr. Fielding's California office in an effort to photograph psychiatric records of Daniel Ellsberg, his former patient, who was then facing charges in connection with the disclosure of the "Pentagon Papers." This break-in, the evidence indicated, was part of a larger plan to damage Ellsberg's reputation by obtaining and releasing derogatory information about him. However, deciding on the proper charge proved no easy matter.

Although these acts obviously constituted burglary, none of the Federal burglary statutes, which are aimed at protecting Federal

property, banks, and interstate commerce, as opposed to private premises, seemed to be applicable. Another law, prohibiting conspiracy in the District of Columbia to commit an offense in another state, as defined by the other state's law, required that the planned action be an offense under both District of Columbia and the other state's law, and the burglary and trespassing statutes of California and the District of Columbia seemed too dissimilar to meet this requirement. A charge of obstructing justice was also considered. Such a charge would have been based on the theory that the break-in was part of a plan to impair Ellsberg's right to a fair trial by spreading damaging information about him. Although one of the defendants later entered a guilty plea to this offense, WSPF decided not to recommend this charge to the grand jury for several reasons. In addition to difficulties of proof as to some defendants, an obstruction charge might have put WSPF in the position of seeming to defend Ellsberg's conduct in the course of the defendant's trial, a position which the prosecutors felt would unnecessarily complicate their task and raise irrelevant issues. Another problem with an obstruction charge based on the known facts was the possible future consequence of inhibiting public officials from making statements on matters of public importance when such matters were also related to judicial proceedings. The prosecutors also considered a charge of conspiring to defraud the Government on the theory that the defendants had misappropriated Government funds and facilities in the anti-Ellsberg effort of which the break-in was a part. But this theory was rejected, as it would have required proof of actions other than the break-in and would have constituted an application of the conspiracy statute in an unusual way that might have been confusing.

All these options involved legal or evidentiary difficulties that the prosecutors saw no reason to face, given the availability of a charge which seemed clearly applicable—conspiring to violate Dr. Fielding's Fourth Amendment constitutional right to be free from unauthorized governmental intrusion on his premises. Proof of this charge required only a showing that the defendants had authorized, planned, and conducted the break-in, and that they had thereby intended and agreed to engage in conduct whose effect was to deprive Dr. Fielding of rights clearly protected by the Fourth Amendment. The choice of this charge involved considerable research on the requirements of the statute (18 U.S.C. § 241) in proving each defendant's intent to violate the Fourth Amendment, which the prosecutors decided could be met by the evidence they would present to the jury.

Another choice the prosecutors often faced in deciding what indictments to seek was whether to ask the grand jury to bring perjury charges against people who appeared to have testified falsely before the grand jury or other bodies, such as Congressional committees. Although such deception had occurred often, many of the possible

charges could not be brought because recent judicial interpretations of the perjury statutes have held that an evasive or misleading statement, even if made with the obvious intent to deceive the questioner, does not constitute perjury if it is literally true. In *Bronston v. U.S.*, the leading Supreme Court decision on this point, the questions and answers were as follows:

Q: Do you have any bank accounts in the Swiss bank . . . ?

A: No, sir.

Q: Have you ever?

A: The company had an account there for about 6 months, in Zurich.

In fact, there was evidence that the witness previously had a Swiss bank account of his own, and his non-responsive answer to the second question was apparently meant to conceal this fact. But the court held that the answer did not constitute perjury since it was literally true; to commit perjury, the witness would have had to give a responsive answer which was willfully false.

Because of the exacting demands of a perjury prosecution, even when the prosecutors were sure a witness had intentionally misled them in testifying before the grand jury, they had to search for a sequence of specific questions and answers that met the crime's narrow definition in order to bring a legally sustainable charge. Many of the questions and answers constituting the basis of possible perjury charges contained qualifying phrases and ambiguities which made it difficult to show that this definition had been met. While the prosecutors, when questioning witnesses before the grand jury, were aware of the requirements of such a charge and tried to frame precise questions and insist on responsive answers when they suspected a witness was trying to deceive them, the main purpose of the questioning was to obtain information, not to create perjury cases. In addition, the prosecutors often did not know enough facts at the time they questioned such witnesses to recognize that their testimony was misleading. The same problems applied to possibly perjured testimony in other forums, such as the Senate Select Committee.

After deciding what charge or charges would be appropriate, the prosecutors prepared the charging document, either an indictment to be voted on by the grand jury or an information to be filed in court by the Special Prosecutor. An information can be used instead of an indictment when only misdemeanors are charged, or, in felony cases, only if the defendant waives his right to have the matter presented to a grand jury. In accordance with common practice, WSPF used informations instead of indictments in felony cases when discussions with defense counsel had resulted in a defendant's decision to plead

guilty to an agreed-upon charge at the time the information was filed in court. Having made such an agreement, the defendant no longer needed the protection afforded by grand jury review of the evidence. When such a plea agreement was made after evidence regarding a defendant had been presented to a grand jury, the prosecutors usually explained to the grand jurors what the terms of the agreement were and why it had been made.

In felony cases, after hearing the evidence and the advice of prosecutors on the applicable law, grand juries deliberate and vote on the proposed indictments the prosecutors have presented to them. The law requires that at least 12 of the 23 grand jurors vote to return an indictment, and the grand jurors who heard evidence from WSPF were instructed by the court, like members of other grand juries in the District of Columbia, to concur in an indictment only if convinced by the evidence that the defendant was guilty of the crime or crimes charged—that is, that the evidence, uncontradicted and unexplained, would warrant a conviction by a trial jury.

Thus the indictment constitutes the grand jury's finding that the evidence is sufficient to justify bringing a named person or persons, or an organization, to trial on one or more specific criminal charges. The standard of proof required for a grand jury to vote an indictment is lower than the absence of reasonable doubt needed for a trial jury to convict a defendant, because an indictment is only a formal pre-trial charge, while a conviction after trial subjects him to criminal penalties. Moreover, a grand jury indictment requires the concurrence of only a majority of the grand jurors, while a conviction requires the unanimous vote of a trial jury. Despite these different standards of proof, WSPF, like many Federal prosecuting offices, attempted to approach a standard of seeking indictments only when all the available evidence, including a defendant's explanations, seemed likely to produce a guilty verdict at trial.

One reason for making charging decisions on the basis of an evidentiary standard higher than that required by law is to avoid subjecting anyone to the publicity, expense, and inconvenience of defending himself against a charge that the prosecutors do not believe will probably be sustained. Additional reasons for WSPF's adopting this higher standard were a desire to maintain its credibility with witnesses and subjects of investigation and the confidence of the public, and to insure that the office exercised restraint and avoided any possible abuses of its power.

Thus, prosecutors' decisions to charge involve consideration of more than the sufficiency of the evidence as they and the grand jurors view it. In assessing the likelihood that the evidence will convince a jury of the defendant's guilt when presented under the

conditions of a trial, prosecutors recognize that their familiarity with all the facts of a case and their assessment of the credibility of witnesses cannot necessarily be transferred to a trial jury, where evidence is strictly limited by trial rules and cross-examination can leave unpredictable impressions. Accordingly, WSPF's attorneys tried to anticipate the problems of a trial setting and the influence of that setting on a juror's perception of each case's strength.

The problem of witness credibility, for example, is affected by jurors' perceptions of what kind of "deal" the witness obtained from the Government. Defense attorneys often characterized such a plea bargain as a reward for testimony favorable to the prosecution, rather than the witness' admission of guilt and agreement to testify truthfully. As noted above, this was a major reason why WSPF was reluctant to seek immunity for any important witness and tried to insist, when plea bargaining with any such witness, on a guilty plea which jurors would perceive as an admission of guilt for conduct related to the charge against the defendant in whose trial the witness would be testifying.

A related problem arises in most "white-collar" and organized crime conspiracy cases. Those who eventually become Government witnesses often have committed perjury, have made false or misleading public statements earlier in the investigation, or have been convicted of crimes in the past. Defense strategy necessarily focuses on such facts as weaknesses in the Government's case. Thus, in contrast to a robbery case, for example, in which the jury must decide between the complainant's testimony and the defendant's version (if he testifies), "white collar" prosecutions normally require two or more witnesses for the Government, or one principal witness whose testimony is corroborated by circumstantial evidence or by documents. In some cases, where the principal witness' version contrasts sharply with the defendant's narrative, documentary evidence also may be sought to show that the defendant's version is false. In a few of WSPF's cases, problems of witness credibility, combined with lack of documentary affirmation, led to decisions not to prosecute. In others, they affected the choice of possible charges against a defendant.

Another tactical consideration involved the use of the Federal conspiracy statute (18 U.S.C. § 371) in cases involving agreements among people to violate Federal law and their actions taken pursuant to such agreements. Conspirators are normally tried together in the same proceeding, and, once the Government has demonstrated by *prima facie* evidence that a conspiracy existed and that certain persons had joined, the acts and statements of each such conspirator in furtherance of the conspiracy's goals constitute evidence against any member of the conspiracy. Thus, when the evidence indicated that a conspiracy

had existed and had resulted in provable actions, the prosecutors brought appropriate conspiracy charges.¹

Once the prosecutors had decided that their prospective case against a defendant was strong enough in factual, legal, and tactical terms to justify charging him, other factors sometimes came into play. Historically, prosecutors have had broad discretion in deciding whether to file charges in criminal cases, and have taken into account factors other than those the law requires them to consider. The American Bar Association has noted some of these in its *Standards Relating to the Prosecution Function*, which provide in part:

The prosecutor is not obliged to present all charges which the evidence might support. The prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute, notwithstanding that evidence may exist which would support a conviction. Illustrative of the factors which prosecutors may properly consider in exercising this discretion are:

- (ii) the extent of the harm caused by the offense;
- (iii) the disproportion of the authorized punishment in relation to the particular offense of the offender;
- (iv) cooperation of the accused in the apprehension or conviction of others.

For the most part, and for reasons similar to those which dictated a conservative approach to immunity, these discretionary factors were important only in reducing charges as part of an agreement whereby a defendant would enter a guilty plea. In a few cases, however, considerations such as a defendant's health resulted in decisions not to prosecute at all. In a few campaign contribution cases, in addition to individual factors present in all cases, potential defendants had relied on the advice of counsel or on prior explicit non-enforcement decisions by Government agencies in concluding that their activities had been lawful, and the prosecutors decided not to charge them because their

¹ Over the years, many lawyers and commentators have criticized the Federal conspiracy laws and the rules of evidence involved in their use at trial. Most of the criticism focuses on use of the conspiracy concept in factual situations where a purported agreement was not followed by enough action to warrant such a strong criminal sanction, or where the so-called agreement was based on facts showing persons performing the same kinds of acts with little or no indication that an agreement or plan among them had produced the similar actions. In the conspiracy cases brought by WSPF, this potential for abuse was not present: in each case, the prosecutors believed they could show that the defendants had made an agreement and then had taken actions pursuant to the agreement. In some investigations that showed an apparent agreement or a strong inclination to commit acts that probably would have been criminal if carried out, the prosecutors decided not to bring charges because there was little or no evidence that the plan had actually been implemented.

violations seemed to rest upon honest misunderstandings of the law. In addition, when a possible defendant had already been convicted of a serious crime as a result of WSPF's work and given a sentence of imprisonment, it seemed undesirable and unnecessary to bring additional charges against him, particularly since any additional sentence he might receive would probably run concurrently with the sentences already imposed, having no effect on the actual period of imprisonment.

The final charging decisions were always made by the Special Prosecutor.² The process of reaching these decisions resembled the practice of the Justice Department's Criminal Division in major cases, involving more formal preparation and discussion than usually takes place in most U.S. Attorney's offices. Typically, the lawyers who had handled the investigation prepared a prosecution memorandum setting forth the facts of the case, the applicable law, the evidence available for use at trial, any foreseeable defenses or weaknesses in the case, and their recommendations; a draft indictment often accompanied this memorandum. Discussions with the head of the task force, and perhaps with other lawyers within it, produced a recommendation, or in some cases conflicting recommendations, to the Special Prosecutor, which his Deputy, his Counsel, and sometimes other attorneys in the office then reviewed.

A WSPF departure from many Federal prosecutors' normal practice was to invite the prospective defendant's lawyer to present any arguments he might have against prosecution; in almost all cases the lawyers accepted such invitations. This was done to make sure that the Special Prosecutor's final decision took into account any possible weaknesses in the case or defenses that might be raised after the charges had been made public. On a few occasions, defense lawyers succeeded in convincing the prosecutors that their clients would probably be acquitted if they were charged, or that charges were likely to be dismissed, thus preventing prosecutions of dubious merit. The Special Prosecutor's final decision often came after extensive discussions within the office, and in a few cases, serious disagreements.

By the time the prosecutors were ready to make a charging decision in any case, they had usually had enough contact with defense counsel to know whether the case was likely to go to trial or whether the defendant could be expected to plead guilty in return for a reduction in his total liability. In the minority of cases where a plea bargain

² Each of the three Special Prosecutors recused himself as to certain matters which involved actual or possible conflicts of interest, delegating all decision-making to his deputy or another member of the senior staff. For example, Special Prosecutor Jaworski took no part in decisions on matters relating to the dairy industry's activities because his law firm had been involved in litigation to which the principal dairy cooperative had been a party and because he was personally acquainted with some of the persons involved in the investigation.

was never expected or could not be agreed on by the parties, the prosecutors began to prepare for trial after filing the charges. Trial preparation involved the steps usually taken by prosecutors—deciding which witnesses to call and in what order, deciding which of the attorneys would perform what functions during the trial, preparing and arguing pretrial briefs and motions, preparing the opening statement and other such actions.

In several cases, WSPF was faced with a pretrial problem which prosecutors do not normally find difficult to resolve: meeting the legal requirement of providing defendants with information claimed to be necessary for their defense.³ Apart from the efforts required to locate all such material available to them and supply copies to defendants, the prosecutors also faced defense contentions that they were entitled to material held by Congressional committees and the White House. These materials might be unavailable to WSPF—in the case of the committees because they are part of a separate branch of Government, in the case of the White House because of its adversary relationship with WSPF during the Nixon Administration.

Fortunately, most Congressional committees agreed to supply WSPF for this purpose with relevant material they held. In the one case where such materials were not supplied, the trial judge ruled that the disclosure requirement did not apply to the legislative branch. No defendant was able to show that the White House withheld exculpatory evidence.

PLEA BARGAINING

In the majority of cases, pretrial problems did not arise because the prosecutors had reasons to expect pleas of guilty through agreements negotiated with defendants and their lawyers. Plea bargaining accounted for the disposition of most of the cases brought by WSPF, as it does for the great majority of criminal cases throughout the country.

Although the prosecutors never brought a charge they did not believe they could support at trial, they were usually willing to reduce a defendant's total liability in return for his guilty plea to

³ Federal prosecutors are obliged to provide defendants with so-called "Jencks" material—copies of certain relevant prior written or transcribed statements and all such statements of government trial witnesses which are available to the Government, and WSPF was required in some cases to supply these before trial. Prosecutors are also required to supply defendants with "Brady" material—any evidence they have which might show that a defendant was not guilty. Although the office's legal position has been that such material must be supplied only when it is under the control of a non-adversary part of the executive branch, the prosecutors endeavored to go beyond the law's requirements in assuring that defendants received all relevant material.

an appropriate charge and cooperation in their investigations. If they had not been willing to do so, many of the investigations would not have progressed nearly as far as they did, and would have uncovered far less evidence of criminal activity by fewer people. Often, because of the nature of the matters being investigated, the only hope of developing provable cases lay in obtaining the cooperation of witnesses who had been involved in the same activities. In many investigations the office initially developed evidence of one person's criminal liability, disposed of his case through plea bargaining in return for his cooperation, and obtained from him additional evidence which led to the prosecution of others. To achieve this result in a reasonable amount of time, the only alternative to plea bargaining with a suspect was not bringing him to trial but granting him immunity.

Plea bargaining speeded up not only the investigative process but also the process of public exposure of wrongdoing. A guilty plea by a defendant in a major case involved his public admission of conduct constituting one or more crimes and his agreement to tell the prosecutors what he knew about the criminal activities in which he had taken part and about the involvement of others. Thus it advanced the public's understanding of the extent of wrongdoing in high places, weakened the often-heard assertions, particularly in the Watergate case, that criminal conduct had been confined to a handful of lower-echelon employees, and put other potential witnesses and defendants on notice that their knowledge about or involvement in crimes might soon be disclosed to WSPF, thereby increasing their incentive to cooperate with the office.

By its nature, plea bargaining results in a less complete public exposure of the evidence and the facts of a defendant's conduct than a trial would provide. But a criminal trial also has limited value in bringing the facts of wrongdoing to public attention. The evidence presented in a trial is usually only a part of the information gathered in an investigation. The defendant's right not to testify can prevent the disclosure of many facts about his conduct. Many kinds of misconduct discovered in investigations are not crimes and therefore cannot be the subject of charges or trials. Because the prosecutors are required to prove every charge beyond a reasonable doubt, they limit their proof to the facts which they can show most clearly and convincingly at trial, omitting other facts which might be highly informative to the public but have little value as evidence in a trial setting. Perhaps most important, a trial of a single person or even several defendants can at best reveal only the evidence related to their alleged criminal acts, without presenting fully all available evidence of other peoples' involvement in the same course of conduct. In short, while a trial is usually an effective way to assess a defendant's criminal responsibility in a fair manner, it is not especi-

ally effective in informing the public fully about his or anyone else's conduct, nor is it meant to serve such a purpose.

Plea bargaining tends under some conditions to produce unfair results—innocent people pleading guilty to avoid the uncertainty and delay of a trial, people who could be convicted of very serious crimes pleading guilty to much less serious offenses and receiving minimal sentences. Such distortions sometimes occur in overloaded urban court systems, where backlogs of pending cases force prosecutors to make major concessions and the pressures of pretrial detention and overburdened public defenders lead some defendants to plead guilty although they would not be convicted at a trial. But such assembly-line conditions did not apply to the cases WSPF handled. Certainly there were no such pressures on defendants to plead guilty in WSPF's cases. They were not jailed before trial unless they were serving sentences for other offenses, and all were represented by private attorneys who could give adequate attention to their cases.

However, there were substantial pressures on WSPF to plea bargain. While the office had no backlogs of the sort that big-city prosecutors commonly face, requiring them to dispose of large numbers of cases on a daily basis, the campaign contributions task force in particular had a heavy workload of matters to investigate and prosecute, and was generally more reluctant than the other task forces to devote the time and personnel that long and complex trials would have required. Furthermore, the conduct involved in election-law reporting violations was seen as less serious than that often found in other areas of the office's investigations, such as obstruction of justice and perjury. Some of the election laws whose violations the task force uncovered have been unenforced for many years, in some cases because of announced Justice Department non-enforcement policies. While the task force knew that one of its important functions was to reverse such policies and establish precedents for enforcing the campaign laws, it did not seem fair to initiate such a policy change by imposing on individual defendants the full burden of serious criminal liability.

Particularly in the area of campaign laws, evidence sufficient to lead to convictions often would not have been obtained without plea bargaining. Such investigations would require examining each corporation's records in search of large cash diversions that might indicate concealed contributions that had remained undiscovered in years of continuous tax audits. The next step would be the difficult if not impossible task of getting testimony from someone within the corporation about the disposition of the cash. This process would clearly take a great deal of time and effort, and the chances of its leading to criminal charges and convictions in the foreseeable future were uncertain at best.

These considerations led Special Prosecutor Cox to announce in October 1973 a plea-bargaining policy aimed at encouraging corpora-

tions to volunteer the facts of any illegal campaign contributions in the 1972 elections. The early public disclosure by American Airlines that it had made an illegal contribution prompted Cox to issue such an invitation to all corporations, promising that their voluntary disclosures would be considered in disposing of their cases.

In October, after some other corporations had made such disclosures, Cox announced that while such "volunteer" corporations would be charged with making illegal contributions of corporate funds (18 U.S.C. § 610), only the primarily responsible officer of each such corporation would be charged, and that charge would be a one-count misdemeanor violation of § 610. This policy resulted in guilty pleas by 12 corporations and 10 corporate officers—the first group of convictions of corporate officers for consenting to illegal contributions in many years.

The announcement of a policy aimed at inducing corporations and their principal officers to make voluntary disclosure was coupled with a warning that efforts by corporate officials to obstruct investigations would be considered as aggravating factors in WSPF's charging and plea-bargaining decisions. In two cases, such obstructive conduct resulted in the felony convictions of two executives for violating contribution laws. And the "volunteer" corporations were required to disclose the slush funds and bookkeeping methods they had used to conceal their illegal contributions, thereby incurring possible liability under the tax laws, the Securities and Exchange Act, and other regulatory statutes.

The nature of some other matters WSPF was investigating, and the circumstances under which the prosecutors worked, also led to plea bargaining. In the midst of a national crisis, WSPF felt an obligation to complete its investigations and establish individuals' criminal responsibility, or lack of responsibility, as quickly as was consistent with thoroughness and fairness. Plea bargaining provided a means of doing so. It also provided both prosecutors and defendants with a chance to avoid the delays and uncertainties involved in trials. When he approved agreements with defendants and their lawyers, the Special Prosecutor was making largely subjective judgments that such benefits were worth the price in terms of defendant's reduced liability. Whether those judgments were correct is a question on which people may reasonably differ from case to case. On some of them, there was serious disagreement within the office, resulting on one occasion in the resignations of staff members.

The perceived benefits of plea settlements were accompanied by prosecutors' concerns that the resulting agreements reflected appropriately the nature and seriousness of such defendants' conduct. This concern required the Special Prosecutor to determine whether a proposed disposition was adequate in two respects. First, he had to determine whether the admitted guilt included a sufficiently serious

charge to allow the judge adequate scope for sentencing. Second, he had to decide whether the plea would resolve the issue of the defendant's guilt or innocence of the underlying conduct which the evidence established.

In resolving the first question, the Special Prosecutor was generally prepared to accept a guilty plea to a one-count felony charge, most of which carry a 5-year maximum sentence under Federal law, in any case in which the defendant's potential liability was greater. As to the second question, the general practice was to attempt to require a disposition which made clear that the defendant was guilty of at least one of the principal charges that could be brought against him. Because of this desire to resolve issues of guilt, the office refused to accept pleas permitted by the Supreme Court's decision in *United States v. Alford*, in which the defendant asserts his innocence at the time of the plea ⁴ but makes an informed judgment that a guilty plea is more advantageous to him than risking a trial. For similar reasons, with the exception of one case in which an individual defendant's earlier admissions of campaign-law violations was seen as especially helpful in encouraging others to come forward, no defendant was permitted to plead *nolo contendere*. Such a plea does not acknowledge guilt, although its legal effect is much the same as that of a guilty plea.

In some cases the Special Prosecutor was willing to accept pleas to crimes which were less serious than felonies carrying 5-year sentences, or which failed to fully resolve the defendant's guilt or innocence of the charges against him.⁵ As noted above, it is difficult to define precisely the bases of discretionary decisions to charge and to plea bargain. However, among the considerations which led to the acceptance of such pleas were the fact that the offense most accurately defining the defendant's conduct carried less than a 5-year maximum penalty, the nature and seriousness of the defendant's criminal conduct, the belief that unique or unusual facts and circumstances explained or mitigated the seriousness of the conduct, evaluation of the strength of the case if it should go to trial, the importance to the prosecutors of the defendant's cooperation and the nature of such cooperation, and the existence of any representations made to the defendant in the course of his dealings with the office.

⁴ Because the prosecutors did not think it proper to insist that a defendant acknowledge greater degrees of moral guilt or criminal intent than the plea required, simply because he was admitting legal liability, and because the prosecutors did not believe they should become involved in any statement a defendant might make outside of court, some defendants after entering guilty pleas made out-of-court statements to the effect that they were innocent of wrongdoing.

⁵ The "volunteer" policy in corporate-contribution cases involved a blanket exception to the general practice. In most cases the evidence would have supported a felony charge against the responsible officer, but because of his cooperation and other factors discussed previously, he was charged with a "non-willful" misdemeanor violation.

There was, of course, an inevitable tension between the prosecutors' goal that pleas of guilty be to appropriately serious charges and the defendant's incentive to obtain a reduction in his potential liability. WSPF used several possible approaches in dealing with this tension. In some cases, when a defendant's potential liability included charges of multiple but related violations of the same statute, the prosecutors dropped most of the charges in exchange for a guilty plea to one or a few of them, usually those supported by the strongest evidence of the defendant's overall criminal activities. Another approach was to drop charges of perjury or making false statements in exchange for a guilty plea to the crime or crimes whose concealment had been the purpose of the false statements. A third method was to drop substantive charges in exchange for a guilty plea to a conspiracy charge whose proof would include evidence of the conduct violating one or more of the substantive criminal statutes.⁶

Other patterns were also followed. The selection of charges to be used for guilty plea purposes depended heavily on the facts and circumstances of each case. If a defendant was facing charges or possible charges in another jurisdiction or in connection with the investigations of more than one of WSPF's task forces, it was necessary to take his liability as to all such matters into account in plea bargaining. This could result in a defendant's pleading guilty to charges in one area of WSPF's investigations in return for the dismissal of charges in another task force's area or in another jurisdiction which were unrelated except in the sense that the same defendant was involved. When charges outside WSPF's jurisdiction affected plea bargaining, the prosecutors consulted with the Assistant Attorney General in charge of the Justice Department's Criminal Division and obtained his consent to the disposition.

In assessing the effect of a particular plea bargain on a defendant's liability, prosecutors and defense attorneys generally compare the sentence he realistically seems likely to receive if convicted on all possible charges against the sentence he seems likely to receive after his plea. WSPF also used this means to assess what benefit a particular plea bargain would provide a defendant. For example, an elderly defendant with a very ill wife would probably not receive consecutive sentences on multiple charges, particularly if he had had a previously distinguished career without prior criminal involvement. A possible 2 to 5-year maximum sentence on one felony plea did not represent a significant concession by a prosecutor who could bring other possible criminal charges against that defendant arising out of similar activities.

⁶ When plea agreements had been reached before the filing of formal charges, the prosecutors filed only the charges to which the defendant intended to plead guilty. When charges had already been filed before the agreement, the prosecutors consented to the dismissal on the defendant's motion of charges to which he was not pleading guilty.

Two of the factors listed as proper by the *ABA Standards* for prosecutorial consideration in charging are "the extent of harm caused by the offense" and "the disproportion of the authorized punishment in relation to the particular offense or the offender." These considerations imply a concern for proportional equity among defendants which often weighed in WSPF's plea bargaining practices. When a person who had played an important and responsible role in the course of criminal conduct had received the benefit of a plea bargain because of his ability to supply the prosecutors with information they needed, or could not be charged with the most serious of his probable offenses because of evidentiary or legal difficulties, the prosecutors were reluctant to insist that someone else, who had played a relatively minor role in the same activities, plead guilty to a more serious charge. While WSPF took the view that a defendant who had played a subordinate role in major criminal conduct or had occupied a lower-level position in a Government organization should, if possible, be charged, concern for proportionality suggested that a subordinate should not, if possible, face greater liability than the person who had directed his criminal activities or otherwise bore greater responsibility. Thus, when relatively minor figures had been convicted of serious offenses, the prosecutors believed that those with greater responsibility or those who had committed more serious crimes should plead to factual charges that show the difference in their culpability, and WSPF supplied the evidence of their more serious conduct to the probation officer who would recommend a sentence to the judge.

Since in most cases a major purpose of plea bargaining was to obtain the defendant's cooperation in WSPF's investigations, it was necessary for the prosecutors to know in broad terms what information he could provide and to have some confidence that he would be cooperative and truthful. In some of the cases where a prospective defendant had not been cooperating with WSPF before plea bargaining, his counsel offered a hypothetical statement of the significant evidence he would provide. The prosecutors then decided whether they believed his expected cooperation, combined with other factors, justified a plea bargain, and, if so, made an appropriate offer to the defense attorney. Sometimes this process required several meetings, during which defendants' attorneys brought to the prosecutors' attention exculpatory facts about their clients or points of law in their favor. The prosecutors then had to meet among themselves to decide whether to agree to any defense proposal or accept any argument for reduced liability, and the defense lawyers had to relay prosecution offers back to their clients, advise them about the wisdom of accepting or rejecting the offer, and return to the prosecutors with their responses or counter-proposals. Many of the completed plea agreements involved very close decisions within WSPF and strong disagreements among the prosecutors.

Except in the cases of "volunteer" corporate contributors, where a plea-bargaining policy had been announced publicly before the disposition of any case, the terms of each agreement were embodied in a letter from the Special Prosecutor to the defense attorney, which was made public and filed in court at the time the plea was entered. Ordinarily this letter indicated that the defendant would plead guilty to a specified charge or charges; usually, the plea would cover his criminal liability in matters then known to WSPF, but in some cases pleas covered liability only in connection with more limited matters specified in the letter. The agreement did not cover any future criminal conduct, including perjury, or any undisclosed past crimes which WSPF might uncover in the future and was conditioned on the defendant's giving truthful statements or testimony. In most cases, the defendant would agree to cooperate fully with WSPF by revealing his knowledge of all matters under investigation and testifying if necessary at the trials of others.

It was further agreed that the extent of his cooperation, as the prosecutors perceived it, would be made known to the court at the time of sentencing.

The greatest concern of most plea-bargaining defendants was the sentence they were likely to get, particularly their chances of being imprisoned for any period of time. The prosecutors' position on sentencing, like that of most federal prosecutors, was to insist that the defendant plead guilty to a charge whose authorized maximum penalty would allow a judge to impose an adequate term of imprisonment if he felt one was warranted. The prosecutors also reserved the right to submit to the probation officer of the court, for the pre-sentence report, a statement of the evidence they had gathered which tended to show the full circumstances of the conduct the defendant had acknowledged in his plea, and similar conduct in which he had engaged; a copy of this statement was given to defense counsel but it was not subject to his approval. While the prosecutors did not recommend sentences, they reserved the right to challenge any false or misleading factual statements made by the defendant or his counsel at the time of sentencing.⁷

Defendants who were lawyers were often most concerned about a conviction's effect on their licenses to practice law. In their cases, the prosecutors supplied copies of the indictment or information, the letter describing the plea bargain, and all other papers submitted in court on the case to the Center for Professional Discipline of the American Bar

⁷ In one case, the prosecutors agreed to inform the judge that the defendant would have been charged with a less serious offense if one could have been found which accurately described his conduct. In another, they agreed to call the judge's attention to the sentencing provisions of a substantive statute carrying a less severe maximum penalty than the conspiracy charge to which the defendant had entered his plea.

Association and to the Special Committee on Watergate Discipline of the National Organization of Bar Counsel. These organizations had agreed to notify the relevant state bar associations of the convictions of any of their members, and to monitor any disciplinary proceedings such state bodies undertook as a result. WSPF also responded to requests from State and District of Columbia bar organizations for information regarding the conduct of lawyers who had been convicted.

WSPF's policy against making sentence recommendations applied to cases disposed of either by guilty plea or by trial verdict, and was based on the view, shared by many prosecutors, that sentencing is a judicial function which judges can perform more effectively than prosecutors. However, it is important that sentencing judges be aware of all the facts relevant to their decision, and in plea bargaining the prosecutors reserved their right to inform the judge of such facts, as described above. After conviction by trial or plea, the sentencing of many defendants was delayed long enough to permit probation officers to prepare a pre-sentence report for the judge's use. However, in all the "volunteer" corporate contribution cases and a few others, at the initiative of the judge, defendants were sentenced immediately after the entry of their pleas, with neither pre-sentence reports from the probation office nor factual information from the prosecutors beyond a description of the offense which was the subject of the plea.

Major Investigations and Other Actions

The five task forces of WSPF conducted investigations of several hundred separate matters, and the counsel's office provided legal and policy advice and other services to the task forces and the Special Prosecutor. The most important work of the five task forces and the counsel's office is described in summary form in this chapter. Not included are large numbers of investigations each of which involved a relatively minor commitment of office resources and did not result in criminal charges. Also omitted are a number of investigations requiring more substantial efforts which have not been publicly disclosed in the past and which did not result in charges. Reporting them here would publicize, for the first time and in an improper forum, allegations from which the prosecutors concluded they should not initiate court action for the various reasons cited in Chapter 2. In the investigations included within this chapter, allegations are cited if they have already received extensive publicity or if they had become public through court proceedings, legislative inquiries or other forums. As to these also, when no prosecution resulted, the prosecutors made the decision on the basis of one of the factors, or a combination thereof, as outlined in Chapter 2.

WATERGATE TASK FORCE

Investigation of Watergate Cover-Up

When WSPF was established in May 1973, seven men already had been convicted of burglary, conspiracy, and wiretapping charges in connection with the break-in at the Democratic National Committee headquarters on June 17, 1972. Part of the public testimony before the Senate Select Committee supported allegations that high officials of the Administration and the President's re-election campaign either had sponsored the break-in or had tried to prevent the original investigation from reaching beyond those seven. In addition, the Assistant U.S. Attorneys for the District of Columbia, who had handled the investigation until the Special Prosecutor's appointment,

had obtained information strongly suggesting the involvement of others.

By October 19, as a result of information developed by the U.S. Attorney's office and then by WSPF, three important witnesses had pleaded guilty to conspiracy charges in connection with the cover-up—former campaign officials Fred LaRue and Jeb Magruder and former White House counsel John Dean. All three later testified for the prosecution at the trial of others involved. WSPF also obtained a guilty plea from former campaign official Herbert Porter, to a charge of making false statements to a Government agency in connection with the cover-up.

Along with efforts in the summer and fall of 1973 to obtain the cooperation of these witnesses, WSPF also attempted to obtain by grand jury subpoena other relevant evidence in the form of documents and tape recordings of Presidential conversations. Special Prosecutor Cox's efforts to obtain compliance with the subpoena resulted in his dismissal at President Nixon's direction in October, followed by the appointment of Special Prosecutor Jaworski and the production of some of the subpoenaed materials. The President's compliance with the subpoena was incomplete, however (see below, the discussion of the 18½ minute gap), and the necessary inquiries into the causes of his failure to so comply further delayed the development and presentation to the grand jury of evidence relating to the cover-up.

Nevertheless, by March 1974, the grand jury had obtained sufficient evidence to hand up indictments on charges of conspiracy, obstruction of justice and perjury; seven men formerly associated with the White House or the President's campaign committee were named as defendants to one or more of the charges—Charles Colson, John Ehrlichman, H. R. Haldeman, Robert Mardian, John Mitchell, Kenneth Parkinson, and Gordon Strachan. At the Special Prosecutor's suggestion, the grand jury also submitted a report which the court transmitted under seal to the House Judiciary Committee in connection with its inquiry into the possible impeachment of President Nixon. The report contained evidence relevant to the Committee's inquiry into the President's possible involvement in the cover-up. In addition, the grand jury authorized the Special Prosecutor to name 18 individuals, including President Nixon, as unindicted co-conspirators.

After the indictment, the Special Prosecutor obtained a trial subpoena for additional White House tapes and documents. Much of the summer of 1974 was consumed by litigation over the validity of this subpoena, which was eventually upheld by the Supreme Court, and by examination of the materials produced in compliance with the court's decision. During this period, the House Committee completed its impeachment inquiry by recommending the President's impeachment, the President publicly released transcripts of several

subpoenaed tapes which showed him to have been a participant in the cover-up, and he resigned his office August 9. The prosecutors immediately began to review the question of his possible criminal liability, but before any final decision could be made on whether to recommend his indictment he was pardoned by his successor, President Ford.

By the time the trial started on October 1, charges against Colson had been dismissed as a result of his guilty plea in another case (see below, the discussion of Fielding break-in), and those against Strachan had been severed. The trial of the five remaining defendants, which lasted 3 months, resulted in the convictions of Ehrlichman, Haldeman, Mardian, and Mitchell, and the acquittal of Parkinson. Mitchell, Haldeman and Ehrlichman were each sentenced to serve 2½ to 8 years imprisonment, while Mardian received a 10-month to 3-year prison sentence. All four convictions are now on appeal. The charges against Strachan were dismissed on motion of the Special Prosecutor because the legal effect of immunity granted to him by the Assistant U.S. Attorneys and the Senate Committee created doubts about whether he could be tried without infringing upon his constitutional privilege against self-incrimination.

After the Watergate cover-up trial, intensive investigation and consideration was devoted to possible perjury and obstruction of justice by two other persons during the course of the 1972-73 cover-up investigation. Evidentiary and legal problems prevented initiation of prosecution in these matters.

Investigation of 18½ Minute Tape Gap

On October 23, 1973, the White House agreed to provide the U.S. District Court for the District of Columbia with subpoenaed tapes, notes, and memoranda of nine Presidential conversations related to the Watergate cover-up. Seven conversations were produced, but White House counsel claimed that the remaining two had not been recorded. This assertion led Judge Sirica to hold hearings beginning October 31 to determine the facts. On November 21, while the hearings were recessed to await further testimony on the failure to record the two conversations, White House counsel Fred Buzhardt requested an in-chambers meeting with Chief Judge John Sirica and attorneys from WSPF. At that meeting, Buzhardt announced that the subpoenaed tape of a conversation between President Nixon and H. R. Haldeman on June 20, 1972—3 days after the Watergate break-in—had been obliterated inexplicably by a buzzing sound lasting 18½ minutes. Haldeman's notes of that meeting indicated that the obliterated portion of the tape covered only that part of the conversation which was related to the break-in.

The discovery of this tape gap led Judge Sirica to reopen the hearings, which continued for 7 days in late November and early December. The President's secretary, Rose Mary Woods, testified at the public hearing that she might have accidentally erased 4 or 5 minutes of the subpoenaed tape on October 1, 1973, while transcribing the conversation. She explained that this possible erasure occurred when she inadvertently left her foot on the pedal controlling the tape recorder while answering the telephone and conducting a conversation. In addition to Miss Woods' testimony, other White House aides, attorneys, and Secret Service personnel answered questions about the storage of the tape, the methods used to transcribe it, who had access to it, and the discovery of the gap. Testimony and access logs kept by custodians of the tapes revealed that, after being recorded, this tape had been routinely placed in a storage vault and not disturbed until September 28, 1973, two months after it had been subpoenaed by the grand jury. Any mishandling of the tape appeared to have occurred between that date and the discovery of the gap by White House counsel on November 14, 1973.

In a further effort to ascertain the cause of the 18½ minute gap, the court appointed a panel of six experts in acoustics and sound engineering approved by the White House and WSPF. The panel was asked to determine the method by which the gap had been created, the kind of machine that had been used to create it, and the existence of any possibility of recovering the conversation. The experts began various tests on the tape early in December in the presence of representatives of the White House and WSPF. Their report, delivered to the court January 15, 1974, concluded that the gap had been produced by at least five separate hand operations of the stop and record buttons of a Uher 5000 machine, the same model used by Woods in transcribing the tape. The panel also concluded that recovery of the obliterated conversation would be impossible.

Since the experts' report made it clear that the gap had been caused by intentional erasures, and evidence produced at the hearings showed that the erasures had occurred after the tape had been subpoenaed, Judge Sirica referred the matter to the grand jury for further investigation of the possibility of obstruction of justice. A grand jury, assisted by WSPF and the FBI, began hearing witnesses January 28, 1974. It concluded from the testimony of over 50 people that a very small number of persons could have been responsible for the erasures, but it was unable to obtain evidence sufficient to prosecute any individual.

Investigation of Submission of Presidential Transcripts to House Judiciary Committee¹

On April 30, 1974, President Nixon authorized the submission to the House Judiciary Committee, and the release to the public, of a number of transcripts of recorded conversations. The Committee had subpoenaed the original tapes of these conversations in connection with its impeachment inquiry. At the same time, the President offered to allow the Committee's chairman and ranking minority member to listen to the original tapes and verify the accuracy and completeness of the transcripts. The Committee declined this offer.

The Committee and WSPF had already obtained some of the tapes of conversations included in the transcripts, and comparison of the WSPF transcripts with the White House transcripts showed that the latter contained several omissions of portions of conversations. The prosecutors made some inquiries in the months following the transcripts' release, but investigation had to await WSPF's receipt of additional tapes in August 1974, pursuant to the trial subpoena in the Watergate cover-up case. A full-scale investigation began early in 1975 to determine whether various materials were deleted from the transcripts for the purpose of obstructing the Judiciary Committee's inquiry in violation of Title 18, United States Code, Section 1505. To establish a violation of this section it would be necessary to prove that portions of the conversations damaging to the President were willfully deleted with the corrupt intent to mislead the Committee.

Certain problems made the necessary elements difficult to prove. The Committee already possessed the tapes of several of these conversations, and as to these, White House deletions in transcripts could not mislead or obstruct the Committee. The WSPF investigation thus excluded those transcripts from consideration. Further, President Nixon submitted his transcripts with the express statement that he was providing only the information that he felt was necessary to Committee business. More significantly, however, in view of the White House offer to allow Committee representatives to listen to the tapes for their own verification, corrupt intent was difficult, if not impossible, to establish unless direct proof existed either to negate the bona fides of this Presidential offer to the Committee, or to show an explicitly stated intention to deceive. Finally, the White House transcripts carefully noted that deleted material was "not related to Presidential *action*" (emphasis supplied). The choice of this language to characterize the deletions introduced great ambiguity in the intent factor; an advocate could state with literal truth that the Committee was put on notice by this language that Watergate-related conversa-

¹ Although this matter arose as part of the Watergate cover-up investigation, the inquiry detailed in this section was conducted by attorneys not assigned to the Watergate Task Force.

tions may have been omitted from the transcripts when the conversation had not been followed by specific actions.

This investigation was conducted in large part through the interviewing of various witnesses by WSPF and the FBI, outside of the grand jury. The investigation began with a comparison of WSPF transcripts with those prepared by the White House. Seven or eight deletions were selected which, because of their length and nature, could not realistically have been omitted because of a problem in audibly determining what was on the tape. WSPF focused the investigation on these deletions and attempted to determine why they took place. Almost all persons involved in the preparation of the transcripts in the White House were interviewed to track the transcription process and the course of decision-making as to the deletions. These and other persons were also interviewed in order to check the bona fides of the Presidential offer to have Committee representatives listen to the entire tape for omissions they thought might be relevant to the Committee impeachment inquiry.

WSPF concluded that there is strong circumstantial evidence that at least some of the lengthy deletions were deliberate, but no prosecution was possible. No direct evidence existed to overcome the above problems of establishing the necessary criminal intent. In addition, all the available evidence indicated that the verification offer by the White House to the Committee was made with full expectation that the offer might indeed be accepted.

"DIRTY TRICKS" INVESTIGATION

In October 1973 several newspapers reported that President Nixon's re-election campaign included an undercover network of agents who had engaged in various kinds of political espionage and sabotage against candidates for the Democratic Presidential nomination. The reported activities came to be known collectively as "dirty tricks," and included forging letters and other literature which unfairly attacked some candidates, planting manufactured stories in the press, copying documents from campaign files, and recruiting people to ask embarrassing questions at candidates' rallies or to picket such rallies on behalf of opposing candidates. The *Washington Post* identified California lawyer Donald Segretti as the director of these operations and reported that he had been recruited and paid by White House staff members and re-election campaign aides.

The press disclosures, along with complaints by one of the Democratic candidates whose Florida primary campaign had been a target of such activities, led the U.S. Attorney's office for the Middle District of Florida to conduct an investigation with the help of the FBI. Segretti and George A. Hearing, one of Segretti's associates, were

indicted on May 4, 1973, in Florida on charges of conspiracy and distributing campaign literature without properly identifying its source. A week later, Hearing pleaded guilty and was sentenced to a year's imprisonment.

Even before Segretti's indictment in Florida, the Assistant U.S. Attorneys conducting the Watergate investigation in Washington had interviewed and questioned before the grand jury several former White House and re-election campaign officials about his sponsorship. After the appointment of Special Prosecutor Cox, the "dirty tricks" investigation was taken over by WSPF. Facing the Florida charges and possible charges in other states, Segretti offered in July to cooperate with WSPF, and met with the prosecutors twice that summer, giving information that indicated that former White House aide Dwight Chapin had lied to the grand jury about his involvement in Segretti's activities. Segretti later pleaded guilty to three misdemeanor charges in Washington, D.C., and was sentenced to serve 6 months in prison.

The day after his guilty plea, Segretti testified before the grand jury under a grant of immunity. His testimony and other evidence resulted in Chapin's indictment on four perjury charges on November 29. On April 5, 1974, after trial, Chapin was convicted on two of those charges; one of the remaining charges was dismissed during the trial, and the jury acquitted him of the other. Sentenced to serve 10 to 30 months in prison, Chapin filed an appeal. On July 14, 1975, the Court of Appeals affirmed his conviction.

The Florida investigation had identified several people who had engaged in "dirty tricks" as agents of Segretti. Some had been immunized in order to provide the Florida prosecutors with information about Segretti's own conduct. WSPF's subsequent investigation, which involved his operations in several states besides Florida, identified about 25 people who had engaged in various activities on his instructions. Most of them had engaged in conduct that was not criminal—for example, supplying Segretti with local news clippings, asking embarrassing questions at candidates' public appearances, peacefully picketing events at which candidates were to appear, putting Segretti in touch with other possible agents. Those who had engaged in more serious conduct such as distributing misattributed literature, were generally young people who had done so without knowing it was illegal. Because of their youth, the marginal and isolated nature of their criminality, if any, and their low level of influence in Segretti's operation, WSPF did not seek to prosecute these persons.

Other allegations, including those made in the press and in testimony before the Senate Select Committee, indicated that various other "dirty tricks" had been perpetrated against Democratic campaigns by people working on behalf of the President's re-election.

WSPF investigated these allegations and found either that they did not involve criminal conduct or that the filing of criminal charges was not warranted by the facts uncovered.

The prosecutors also received allegations about possible "dirty tricks" by agents of Democratic candidates directed against President Nixon's campaign. Most of these involved the possible use of Democratic candidates' headquarters and facilities in organizing demonstrations that disrupted public appearances of the President or of persons campaigning on his behalf. The most substantial of these charges was that Senator George McGovern's Los Angeles campaign headquarters and telephone bank had been used in organizing a large demonstration at the Century Plaza Hotel when the President appeared there in September 1972. As to this and the other matters they investigated, the prosecutors did not obtain sufficient evidence to bring criminal charges.

INVESTIGATIONS RELATING TO INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION

During the spring of 1972, while the Senate Judiciary Committee was considering the nomination of Richard Kleindienst to be Attorney General, press accounts suggested that the Department of Justice had settled three antitrust suits in 1971 against International Telephone and Telegraph Corporation (ITT), one of the Nation's largest conglomerates, in return for ITT's alleged offer to help finance the 1972 Republican National Convention. The Committee questioned Kleindienst, other Government officials, officers of ITT, and others with relevant knowledge about the matter, and then requested the Justice Department to investigate the possibility that perjury had been committed in its hearings.

After WSPF was established, Attorney General Richardson, who had succeeded Kleindienst, asked Special Prosecutor Cox to look into the possibility that perjury had been committed in the 1972 hearings (the Justice Department's investigation had made little progress in the preceding year), as well as the possible relationship between the antitrust settlements and ITT's pledges of support for the Republican convention. He also asked Cox to investigate an allegation, referred to the Justice Department by the Securities and Exchange Commission (SEC), that a Commission inquiry had been obstructed by ITT's failure to produce certain documents. An ITT task force was organized within WSPF to conduct these inquiries.

Later, in response to additional referrals from the Justice Department and information received from other sources, the ITT task force also investigated charges that:

—The Kleindienst confirmation hearings had been illegally obstructed;

—Crimes had been committed in connection with the transfer of documents relating to ITT from the SEC to the Justice Department at a time when a House Commerce Subcommittee was seeking such documents and in connection with subsequent Subcommittee hearings inquiring into the circumstances of the transfer;

—ITT had been granted a favorable tax ruling by the Internal Revenue Service as a result of improper influence or fraud;

—Improper influence had been applied to the Justice Department's handling of the antitrust suits against ITT, apart from the 1971 settlement;

—Improper influence had been used in securing the agreement of another corporation to merge with ITT and in obtaining necessary approvals of that merger;

—Perjury had been committed by various people before Congressional committees, the SEC, and the grand jury.

The investigation into the ITT-related matters occupied several attorneys for approximately 18 months. Investigation of the antitrust cases involved an examination of the July 1971 settlements and improper attempts to influence these settlements. The cases involved Government challenges to ITT's proposed mergers with the Canteen Corporation (filed in April 1969), the Hartford Fire Insurance Company (filed on August 1, 1969), and the Grinnell Corporation (filed on August 1, 1969). While other events were also examined, the principal focus was on determining whether illegal influence was exercised (1) to prevent the filing of the Canteen case or cause the Government not to seek preliminary relief enjoining that merger; (2) to convince the Government in the summer and fall of 1970 either to drop the cases entirely or accept a settlement involving no meaningful divestiture; (3) to prevent or delay the filing of an appeal in the Grinnell case to the Supreme Court; and (4) to cause the settlement of all three cases in July 1971.

In each of these instances the evidence accumulated by WSPF showed that ITT had gained access, directly or indirectly, to important Administration officials who in some instances took some action relating to these cases. In only one instance did the effort to secure high-level influence produce a provable impact on the handling of the cases. The further task, however, was to discover whether these attempts to influence the case were corrupt, such as the result of a bribe, or whether they were the product of an intensive though legal lobbying effort. Those whose conduct was examined in this connection included persons who sought the assistance of Administration officials, the officials who discussed these cases with people outside the Government, and those with high-level responsibility for the cases who dealt with Administration officials.

The investigation relating to the Kleindienst confirmation hearings focused on two areas: first and more significant was whether any wit-

ness at the hearings had committed perjury; second, whether the hearings were obstructed illegally. In the search for possible perjury, the investigators examined the testimony of every witness who testified about the ITT antitrust cases and the San Diego convention pledge.

The obstruction inquiry is more difficult to define. It was clear that the Judiciary Committee did not receive the complete "story" during its hearings and did not obtain substantial numbers of pertinent ITT and Government (White House and Justice Department) documents. The goal of WSPF was to discover why this took place and whether the facts involved illegal defiance of Committee process or acts sufficient to constitute a violation of the criminal obstruction laws.

In June 1972, the Securities and Exchange Commission filed a case against ITT and certain of its officers in which a consent judgment was entered. In September and October 1972, the SEC began to examine whether ITT had improperly withheld subpoenaed documents. When, in October 1972, a House Commerce Committee subcommittee requested the SEC's ITT files, the SEC suddenly transferred the case to the Justice Department together with the files, including documents showing significant contacts between ITT and important Administration officials. WSPF investigated the matter to determine whether this transfer was an illegal obstruction of the House subcommittee, whether anyone committed perjury at the various hearings held by the subcommittee into the transfer, and whether the SEC was improperly influenced to omit a fraud charge from its 1972 case. Also examined was ITT's failure to produce documents from its Washington office in response to the SEC's subpoena.

WSPF also investigated the circumstances under which ITT received favorable tax treatment for its merger with the Hartford Fire Insurance Company. The IRS ruled in October 1969 that ITT had to divest its holdings in that company's shares prior to the stockholders' meeting. Later that month, IRS ruled that a contract involving the "transfer" of these shares to an Italian bank (Mediobanca) was a sufficient sale of the shares under the earlier ruling. In fact, it was questionable whether this contract involved a true sale, especially when the circumstances relating to its negotiation became clear. WSPF has focused on whether these tax rulings were the product of improper influence, whether ITT or its representatives were guilty of *criminally* defrauding the Government by misrepresenting the facts relating to the stock transfer, and whether witnesses who testified about the transaction before the SEC had committed perjury. Although the WSPF inquiry in the area of improper influence is completed, the SEC investigation is continuing with a new evidentiary focus as to the transfer of shares.

During its original investigation the Securities and Exchange Commission had also looked into certain events related to the eventual

merger of ITT and Hartford. Although no attempt was made to redo all that the SEC had covered in their investigation, WSPF also conducted its own investigations of these matters.

Finally, the ITT task force also examined testimony before the Senate Foreign Relations Subcommittee on Multinational Corporation's hearings into ITT's activities in Chile during 1970 and 1971 to determine, among other considerations, whether a particular witness had committed perjury. Additionally, the ITT task force spent substantial time investigating possible grand jury perjuries committed during its inquiries.

The investigations of the ITT task force resulted in two criminal cases. In the first case, former Attorney General Richard Kleindienst pleaded guilty on May 16, 1974, to a charge of failing to give accurate testimony at his 1972 confirmation hearings, regarding White House influence on the antitrust suit. He was fined \$100 and given a suspended 30-day jail term. In the second case, California Lieutenant Governor Ed Reinecke was convicted after trial on July 27, 1974, of one count of perjury in connection with his testimony at the same hearings. He received a suspended 18-month sentence, and the conviction is now on appeal.

In the remaining areas of the ITT task force, pursuant to the factors discussed in Chapter 2 of this report, no prosecutions were brought. Primarily, this result occurred because there was insufficient evidence to allow the initiation of a criminal case. Also, as noted above, the SEC continues to investigate one aspect of the ITT matter.

"PLUMBERS" INVESTIGATION

Fielding Break-In

In the course of investigating the Watergate case in the spring of 1973, Assistant U.S. Attorneys for the District of Columbia learned from former White House counsel John Dean that a special investigative unit in the White House, known as the "Plumbers," had been responsible for a break-in in September 1971 at the Los Angeles offices of Dr. Lewis Fielding, conducted to secure the psychiatric records of Fielding's former patient, Daniel Ellsberg. At the time of the break-in, Ellsberg was under indictment for his role in the alleged theft of the classified "Pentagon Papers".

By the time WSPF was established, the investigation showed that "Plumbers" Gordon Liddy and Howard Hunt had planned the burglary, that some of their Cuban-American associates had carried it out, and that White House aides Egil Krogh and David Young had obtained the approval of another White House staff member, John Ehrlichman, for the project. Hunt had been given immunity from further prosecution after his Watergate conviction and Young

had been immunized in order to obtain his cooperation in the Fielding investigation. During the summer of 1973, WSPF's "Plumbers" task force continued this investigation.

On September 4, 1973, a Los Angeles County grand jury which had also been investigating the break-in returned an indictment charging Ehrlichman, Krogh, Liddy, and Young with conspiracy and burglary, Krogh with solicitation to commit burglary, and Ehrlichman with perjury in connection with his testimony before the Los Angeles grand jury. After consultation with WSPF and attorneys for the defendants, the District Attorney in Los Angeles agreed not to press the case to trial pending the outcome of WSPF's investigation.

On October 11, 1973, a Federal grand jury in Washington indicted Krogh on two counts of perjury. These charges were dropped on November 30, following Krogh's plea to a charge of having conspired to violate Dr. Fielding's civil rights and his agreement to cooperate with WSPF. On January 24, 1974, Krogh was sentenced to serve 2 to 6 years in prison, with all but 6 months of the term suspended.

WSPF's investigation culminated in the March 7, 1974, indictment of Ehrlichmen, former White House aide Charles Colson, Liddy, Bernard Barker, Eugenio Martinez, and Felipe DeDiego on charges of conspiring to violate Dr. Fielding's civil rights. Ehrlichman also was charged with lying to the FBI and three counts of perjury in connection with the Federal investigation.

Colson, who also had been indicted in connection with the Watergate cover-up, began discussions with the prosecutors in May to dispose of both matters. An agreement was eventually reached whereby he pleaded guilty on June 3 to a felony charge of obstructing justice, based on his efforts to obtain and disseminate derogatory information about Ellsberg with intent to impede Ellsberg's pending criminal trial. Colson also agreed to cooperate in WSPF's investigations and prosecutions and on June 21, he was sentenced to a 1- to 3-year prison term. The other charges against him in the Fielding and Watergate cases were dismissed.

During pre-trial proceedings in the Fielding case, Ehrlichman maintained that he had not known in advance that Dr. Fielding's office would be broken into and that the effort to collect information about Ellsberg had been a legitimate attempt to protect the national security. Arguing that White House files contained evidence which might support his contentions, his attorneys obtained a subpoena for notes and classified White House documents. When White House resistance to this subpoena threatened to lead to a dismissal of charges against him, his case was severed for a brief period until White House counsel submitted an affidavit that the files contained no material of an exculpatory nature.

Shortly before trial, DeDiego moved for dismissal of the charges against him, claiming that the evidence which would be used against him was based on immunized testimony he had given to a Florida prosecutor. Judge Gerhard Gesell, to whom the case had been assigned, granted the motion. WSPF successfully appealed this decision on the ground that an evidentiary hearing should precede a dismissal. But the prosecutors later dropped the charges because the immunized testimony raised doubts about the probability of a successful trial. The matter was transferred to Department of Justice lawyers who were "untainted" because they had had no access to DeDiego's immunized account.

The Fielding jury trial lasted 3 weeks and resulted in a guilty verdict on July 12, 1974, against all remaining defendants, with the exception of a not guilty verdict on one of the three perjury charges against Ehrlichman. Judge Gesell, in dismissing one charge against Ehrlichman of lying to the FBI, held that the statute he was accused of violating did not extend to the FBI investigative interview under the kinds of circumstances shown at the trial. On July 31, Barker and Martinez, who had spent substantial time in jail following their conviction in the original Watergate case, received suspended sentences and 3 years' probation. Liddy was sentenced to a 1- to 3-year prison term and Ehrlichman to a term of 20 months to 5 years. All defendants have appealed their convictions.

Other Break-In Investigations

Newspaper reports in early 1973 suggested that the participants in the Watergate break-in might also have burglarized the Embassy of Chile in Washington, D.C., on the weekend of May 13-15, 1972, and the homes of Chilean diplomats in New York City earlier in 1972. The "Plumbers" task force investigated these allegations, interviewing the Watergate burglars, officials of the embassy, local police officers, members of a Senate committee staff, former officials of the White House and the Central Intelligence Agency, and journalists. The State Department, CIA, and FBI also provided information in connection with this incident. The investigation did not develop evidence which would form a basis for criminal charges.

WSPF also received allegations from various sources that the White House "Plumbers" or other agents had been responsible for numerous unsolved burglaries in the Washington, D.C., area and elsewhere. The victims of these burglaries had been persons or organizations that might be deemed hostile to the Nixon Administration. The task force's investigations were directed at determining whether there was evidence that the "Plumbers" or other known White House agents had been involved in any of these burglaries. No such evidence was found, and no criminal charges were brought.

Wiretap Investigations

Press reports in May 1973 alleged that between 1969 and 1971 the FBI, at the direction of the White House, conducted wiretaps directed at a number of Government officials and newsmen in an effort to discover the sources of unauthorized disclosures of information related to the national security. It was also alleged that some of these wiretaps had been conducted in connection with the investigation of the disclosure of the "Pentagon Papers." These reports prompted Judge W. Matthew Byrne, then presiding at the criminal trial of Daniel Ellsberg, to order the Justice Department to determine whether or not such wiretapping had occurred, and to produce in court all wiretap evidence in any way related to the Ellsberg case.

William D. Ruckelshaus, the new Acting Director of the FBI, launched an intensive investigation to determine whether such wiretap evidence existed. On May 10, 1973, Ruckelshaus informed Judge Byrne that his investigation had determined that such a wiretap project had taken place, that an FBI employee recalled that during the course of a wiretap on the home phone of Dr. Morton Halperin² at least one telephone conversation of Daniel Ellsberg had been recorded, and that the FBI had not been able to locate the records of these wiretaps. The following day, May 11, Judge Byrne declared a mistrial and dismissed all charges against Ellsberg and his co-defendant on the ground of Government misconduct, citing both the Fielding burglary and the failure of the Government to produce the records of the electronic surveillance of Ellsberg. The following day all records of the wiretap project were located among the White House files of John Ehrlichman and were returned to the FBI. On May 14, 1973, Ruckelshaus held a press conference and revealed that the wiretap project had been conducted from May 1969 to February 1971, that a total of 13 Government officials and four journalists had been subject to electronic surveillance, and that in the summer or fall of 1971 all records of the wiretap project had been removed from the FBI and delivered to Ehrlichman at the White House.

WSPF began its investigation into the events surrounding the wiretap project in the late summer of 1973. Press reports, principally in the *New York Times*, had listed the names of 17 individuals alleged to have been the subjects of these wiretaps. Because some of the Government officials alleged to have been the subjects of these wiretaps had worked in purely domestic areas, WSPF first inquired whether or not these wiretaps had been authorized by the Attorney

² Dr. Halperin, a former assistant to Dr. Henry Kissinger, later filed a civil damage suit against Kissinger and others alleging that the wiretapping of Halperin's phone had been illegal. A number of facts concerning the wiretap project have been made public as a result of the depositions taken in the *Halperin v. Kissinger* litigation. That case is still pending and further depositions may produce additional public information.

General and, even if authorized, whether that authorization had been given on the basis of good faith, legitimate national security concerns.³ It had also been alleged that the wiretap on one of the Government officials had continued after he left the Government to work as a policy adviser for a Democratic Senator then seeking the Presidential nomination. This fact, along with certain documents received by WSPF,⁴ also led WSPF to question whether these wiretaps had been used to develop partisan political intelligence, and in addition, whether or not any wiretap information had been "leaked" to the press or otherwise disclosed. (Disclosure of wiretap information is itself a violation of the wiretapping statute.) The continuing investigation finally focused on whether various Government officials had concealed the existence of these wiretaps to obstruct justice—i.e., to prevent the disclosure of the electronic surveillance of Ellsberg—or had concealed the existence of these wiretaps by illegal means such as perjury.

During September and October 1973, WSPF considered requesting direct access to the wiretap files that Ruckelshaus had brought back to the FBI. Special Prosecutor Cox was asked by the FBI to route any such request directly to the Attorney General since the FBI felt that it could not comply with such a request unless instructed to do so by the Attorney General. Cox decided to hold off further negotiations on this issue until after conclusion of the litigation over grand jury access to Presidential tape recordings. In the interim, WSPF made an initial determination as to which wiretaps appeared to lack proper national security justification, and attorneys interviewed individuals who had allegedly been the subjects of these questionable wiretaps.

After Cox was fired, Jaworski sought and gained access to the wiretap files. The files were reviewed in December 1973 and the following month, WSPF began presenting witnesses on this matter to the newly empaneled grand jury. The prosecutors examined voluminous FBI records, interviewed current and former FBI and Justice Department personnel, secured grand jury testimony, and spoke with others who were believed to have relevant knowledge.

In the summer of 1974, the prosecutors expanded their investigation by obtaining the assistance of FBI agents assigned to the General Investigative Division.⁵ Thereafter, FBI agents conducted most of

³ Warrantless wiretapping on grounds of domestic (as opposed to foreign) threats to national security was not ruled illegal until a Supreme Court decision in June 1972.

⁴ See House Judiciary Report, Book VII, Part I, pp. 360-364, where substantial portions of the documents referred to have been published.

⁵ This arrangement was satisfactory to both the FBI and WSPF since the General Investigative Division had jurisdiction to investigate the types of criminal activity in question, and in addition, that division of the FBI had had no previous dealings with the wiretap project, which had been handled exclusively by the FBI's Intelligence Division.

the initial interviews of witnesses. The investigation of wiretaps initiated by the White House, and the subsequent concealment of the nature and records of that activity, involved the full time of one attorney and part of the time of another over an 18-month period.

The "Plumbers" task force also looked into a number of allegations of non-FBI wiretapping which was alleged to have been illegal. The most significant of these inquiries was the alleged wiretapping for 2 weeks of the home telephone of Joseph Kraft, a syndicated columnist, first revealed in June 1973 by John Dean's testimony before the Senate Select Committee. The investigation included interviews of former White House, FBI, and telephone company officials, an interview of Mr. Kraft, and a review of relevant White House and FBI documents.

The Counsel to the Special Prosecutor examined the various legal issues involved in these wiretap investigations, and concluded:

... Congress has specifically provided in 18 U.S.C. Section 2511(3) that the statutory prohibition against wiretapping does not apply to measures the President believes necessary "to protect national security information against foreign intelligence activities." Whether any of the taps in question fit within this exception could be debated as a matter of statutory interpretation as well as a matter of actual intention, and there would also be room to contend that the duration of some of the taps showed that even an initially legitimate purpose was altered to an impermissible domestic political goal.

Nevertheless, because of the numerous uncertainties in this area, I would be hesitant to recommend a criminal prosecution of any of the principals involved in initiating what appeared to be "national security" wiretaps.

WSPF investigators and Counsel concluded that at least two of the wiretaps, unlike those addressed in counsel's opinion above, had little, if any, "national security" justification. As to these, however, after investigation by WSPF and the FBI, there was insufficient evidence to bring criminal charges, particularly when weighed against other matters under inquiry by WSPF as to some of the subjects of the wiretap investigation.

Alleged Misuse of Federal Agencies

Internal Revenue Service (IRS). In the summer of 1973, the Senate Select Committee heard testimony that members of the White House staff had made various attempts to use the powers of the Internal Revenue Service to further President Nixon's political interests. Former White House counsel John Dean, among others, testified about an "enemies project," which sought "to use the available

Federal machinery," including the audit and investigative powers of the IRS, against individuals and organizations viewed as "enemies" and on behalf of individuals viewed as "friends" of the Nixon Administration.

Because these allegations related to abuses of governmental power similar to the activities of the White House "Plumbers," their investigation was assigned in August 1973 to attorneys in the "Plumbers" task force of WSPF. The prosecutors began to examine the matters raised by the Senate hearings and by related allegations. For example, a lawsuit brought by the Center for Corporate Responsibility claimed that its tax-exempt status had been revoked illegally because of its position on various social and economic issues; and various people who had assumed public positions in opposition to Nixon Administration policies complained that they had been subjected to repeated audits or other forms of harassment by the IRS.

The prosecutors began their investigation by familiarizing themselves with IRS operations, including the normal procedures for initiating audits, and by attempting to determine which of the many allegations appeared to have the most substance and, if true, would form the basis for criminal prosecutions. In this process they interviewed a number of former and current IRS officials who provided information on IRS procedures and in some cases also provided facts giving rise to new inquiries.

Although a large number of allegations about possible misuses of the IRS were investigated, the prosecutors made their most extensive inquiries in two areas—the alleged efforts of White House aides in 1972 to get the IRS to audit and harass Lawrence F. O'Brien, Sr., then the chairman for the Democratic National Committee, and alleged attempts by White House officials to influence the IRS to audit various "enemies" of the Administration and act favorably toward certain "friends" of the Administration. During these investigations, the prosecutors received relevant information from the IRS itself, which had conducted its own "in-house" inquiries, and from the staff of the Congressional Joint Committee on Internal Revenue Taxation, which had conducted investigations of matters raised in the Senate hearings.

From the beginning of both of these investigations the prosecutors faced two substantial problems which made any eventual prosecution unlikely. First, even if evidence tending to confirm the allegations was developed (and in many cases it was), it would have been difficult to prove the specific intent required to establish a violation of Federal law, in this case, a conspiracy to defraud the United States in violation of Title 18 U.S.C. § 371. In theory, any concerted effort to use Government resources for illegitimate and political—

perhaps punitive—purposes would seem to constitute a violation of this provision; but in practice, proof beyond a reasonable doubt of the requisite corrupt intent is difficult where there are objective indicators in each case to support the argument that an audit of an “enemy” was, in fact, in order and consistent with normal IRS standards. Moreover, none of the incidents in question involved evidence of payoffs or other corrupt practices.

A second problem hindering successful investigation arose from the fact that there were numerous inquiries and investigations by other agencies concerning the matters under investigation by WSPF. This often resulted in those principally involved learning substantially all details of the matters WSPF was investigating even before WSPF—and/or the grand juries—came to deal with them. These individuals were able to smooth conflicting testimony and otherwise embroider explanations which made continued investigation by WSPF difficult. Some witnesses who were dealing with WSPF often were close and long-time associates of those under investigation.

Despite these problems the grand jury's investigations did go far in detailing the facts of what had transpired in the area of White House abuse of the IRS. Indeed, in fully investigating the facts of the two specific incidents noted above, WSPF and the grand juries received the testimony of perhaps a hundred or so witnesses. It was concluded ultimately, however, that there was insufficient evidence and/or substantial legal problems mitigating against the bringing of any criminal charges.

White House “Responsiveness Program” and Related Matters. Evidence obtained by the Senate Select Committee and provided to WSPF in 1974 indicated that as part of a “Responsiveness Program” conducted by a staff unit in the White House, certain White House staff members had attempted in 1972 to channel Federal grants, contracts, loans, subsidies, and other benefits to persons and organizations supporting President Nixon's re-election campaign, and to withhold such benefits from those opposing his candidacy. Two instances of possible criminal conduct were alleged to have taken place pursuant to the “Responsiveness Program”: the dropping of an anti-discrimination suit brought by the Equal Employment Opportunity Commission and the rescinding of a Labor Department subpoena directed at a union which was supporting the President. The prosecutors began their inquiry by obtaining background information and the names of about 30 people who had served as White House contacts in the various agencies for the “Responsiveness Program.” The prosecutors then requested the FBI to interview White House staff members allegedly involved, the agency contacts and other witnesses.

One of the prosecutors also reviewed the Labor Department's files regarding the rescinded subpoena.

When additional White House documents became available to WSPF in spring of 1975, various files were searched for documents relating to the "Responsiveness Program" in a further effort to learn whether violations of laws had occurred. On the basis of this investigation, it was concluded that certain memoranda obtained by the Senate Select Committee had exaggerated the effect of the "Responsiveness Program" and, accordingly, no criminal charges resulted from WSPF's inquiries.

A similar investigation probed an allegation that the Department of Labor had delayed, and, in some matters, also denied the promulgation of various occupational health and safety standards in return for contributions to the President's campaign. A memorandum uncovered by Senate Select Committee investigators appeared to substantiate this charge and led the prosecutors to ask the FBI to interview about 10 individuals about the matter. One witness was also called before the grand jury. It was concluded on the basis of this investigation that no violations of criminal law occurred.

The prosecutors also received allegations in March 1974 that White House officials, for the purpose of assisting President Nixon's re-election efforts, had set up the Federation of Experienced Americans (FEA), an organization sponsoring programs for elderly citizens, and had made efforts to shift Federal funding to FEA from the National Council on Senior Citizens and the National Council on Aging, two established organizations of the same type, which had not supported the President's policies and were not expected to support his re-election campaign. The General Accounting Office (GAO), had conducted an earlier investigation of FEA and found that White House officials had brought pressure on Federal agencies to award funds to FEA and had helped it to obtain a donation from a corporation. The GAO investigation resulted in the termination of Federal funds to FEA because of financial improprieties. The prosecutors reviewed the GAO's files and, at WSPF's request, FBI agents interviewed more than 40 Government agency employees and White House and FEA officials about possible White House efforts to channel funds to FEA and possible FEA activities in support of the President's 1972 campaign. No evidence was developed to support criminal charges.

Investigation of Alleged Mistreatment of Demonstrators

Investigation Into an Assault on Antiwar Demonstrators. Newspaper articles appearing in June 1973, and information obtained in the early stages of the Watergate investigation, suggested that officials of the White House and the Committee to Re-Elect the President

had directed an organized assault on antiwar demonstrators on the steps of the Capitol building on the evening of May 3, 1972.

The antiwar demonstration in question featured a number of leading antiwar activists. Coincidentally, but unrelated to the demonstration or the assault, a public viewing of former FBI Director J. Edgar Hoover's coffin in the Capitol Rotunda took place a short distance from the site of the antiwar demonstration.

The early stages of WSPF's investigation, which began in July 1973, revealed that a group of 10 individuals, some of whom had been involved in the break-in of Dr. Fielding's office in California and some of whom subsequently became involved in the illegal entries into the Democratic National Committee headquarters at the Watergate complex, had been present during the assault. Their transportation from Miami was financed with \$3,200 in campaign funds.

On the basis of this and other evidence, WSPF conducted an extensive investigation into this incident because of the allegations that the assault had been ordered by White House officials and because of the close connection between this event and the first Watergate break-in 3 weeks later. It was also considered significant that the original \$1 million plan from which the Watergate burglary evolved included a proposal for mugging squads to rough up demonstrators. Thus, the investigation sought to determine any existence or implementation of a general plan to use paid operatives for the purpose of violent activity against demonstrators and other anti-Administration activists.

Accordingly, more than 150 witnesses were interviewed including victims of the assault, witnesses to it, police officers, and White House and CRP personnel. Witnesses who resided a long distance from Washington and those of less significance were interviewed by the FBI. Of those interviewed, some testified before the grand jury. A request for a thorough search of White House documents relevant to this investigation was made by Cox in October 1973, but relevant materials were not made available to WSPF until the spring of 1975. This investigation consumed a substantial portion of the time of two attorneys over a 6-month period. On the basis of several factors cited in Chapter 2, no criminal charges were brought.

Investigation of Alleged Mistreatment of Demonstrators at Presidential Appearances. A newspaper story in August 1973 alleged that persons who appeared to be demonstrators against or opponents of the Nixon Administration had been excluded or removed from the public coliseum in Charlotte, N.C., on the occasion of the President's appearance there on October 15, 1971, and that this activity had been conducted by local volunteers from the Veterans of Foreign Wars recruited by White House advancemen. The prosecutors had previously been told that advancemen had made similar attempts to keep demonstrators away from the President as he made public appearances around the

country, and they then interviewed a former advanceman about these general allegations. After the publication of the newspaper story, WSPF received from a citizens' group a report containing specific allegations of mistreatment of demonstrators at various Presidential appearances, including the Charlotte incident, from 1971 to 1973.

WSPF investigated these charges through office and FBI interviews of former CRP and White House officials including the advancemen, and through an examination of White House tapes and documents which became available in the spring of 1975. Some of the witnesses were questioned before a grand jury.

In mid-September 1973, Cox learned that the Civil Rights Division of the Justice Department was also investigating some of these same allegations. As a result, arrangements were made between this office and the Civil Rights Division for a joint effort in which investigative responsibilities were divided between the two offices. Major witnesses, however, were interviewed by two attorneys working together, one from WSPF and one from Civil Rights. The investigation, conducted over approximately a 3-month period, did not result in the proof of criminal activity.

Investigation of President Nixon's Tax Returns

Newspaper articles appearing in the summer and fall of 1973 indicated that President Nixon had paid minimal Federal taxes on substantial income earned during the period 1969 to 1972 because of a deduction he had taken for the purported gift of his Pre-Presidential papers to the National Archives. The White House claimed that the papers had been given before the effective date of a 1969 tax reform law that greatly reduced the amount allowed as a tax deduction for such gifts. After considerable public interest and speculation, President Nixon made public in December his tax returns for the four previous years, along with supporting financial data and a request that the Congressional Joint Committee on Internal Revenue Taxation determine whether he owed additional taxes. Both the Joint Committee and the Internal Revenue Service investigated the matter.

Late in March 1974, IRS notified the Special Prosecutor that its inquiry had reached an impasse because of conflicts in the statements of those principally involved in the matter, and suggested that WSPF conduct a grand jury investigation. While the IRS inquiry indicated possible violations of law by former White House staff members whose activities were clearly within the terms of WSPF's jurisdiction, it also indicated the possible involvement of others who were not covered by the language in WSPF's charter. To avoid any possible ambiguity, Jaworski requested and received from Attorney General Saxbe specific authorization to conduct the entire investigation. For about 7 months WSPF conducted an investigation to determine

the facts concerning the alleged gift and whether efforts had been made to conceal the circumstances of the transaction. To this end, the prosecutors interviewed and called before the grand jury a number of witnesses, including former White House staff members and officials of the General Services Administration and its National Archives and Records Service. They also received assistance from others who had looked into some of the questions, including the IRS, the Joint Committee, and the House Judiciary Committee.

The WSPF investigation resulted in the filing of charges against three people. Former White House deputy counsel Edward L. Morgan pleaded guilty on November 8, 1974, to conspiring to defraud the United States by participating in the preparation of backdated documents. He was sentenced to 2 years imprisonment, all but 4 months of which was suspended. On February 19, 1975, the grand jury filed a four-count indictment charging Frank DeMarco, a Los Angeles lawyer who had helped prepare President Nixon's tax returns, and Ralph G. Newman, a Chicago book dealer and appraiser who had estimated the value of his papers for tax purposes, with having engaged along with Morgan in a conspiracy to defraud the United States. The indictment also charged DeMarco with making false statements to IRS agents and with obstructing the Joint Committee's inquiry, and Newman with assisting in the preparation of a false document filed with a tax return. After extensive legal argument, including an unsuccessful mandamus petition by WSPF to the Court of Appeals, the defendants obtained separate trial settings, DeMarco in Los Angeles and Newman in Chicago. As of the writing of this Report, the Los Angeles trial was scheduled for September 16 and the Chicago trial for October 28, 1975.

CAMPAIGN CONTRIBUTIONS

Investigations of 1972 Campaign Financing and Related Matters

Beginning in June 1973, the Campaign Contributions task force systematically examined the campaign finances of major 1972 Republican and Democratic Presidential candidates. This examination included the investigation of several hundred separate transactions, including corporate and labor union contributions, recipients' non-reporting of contributions and expenditures, and alleged *quid pro quo* relationships between contributions and Government actions.

The task force began its inquiries on the basis of the following major sources of information:

1. A list of persons who had made large contributions to President Nixon's reelection campaign before April 7, 1972—the effective date of a new campaign law which required that contributions be reported publicly. The existence of this list, which was kept by the President's

secretary, was initially disclosed in a civil suit brought by Common Cause against the Finance Committee to Re-Elect the President (FCRP). WSPF later obtained the list from the White House.

2. Reports of pre-April 7 contributions to several Democratic candidates, which the candidates had made public.

3. Reports of post-April 7 contributions to candidates of both parties which had been filed with the General Accounting Office pursuant to the new law.

4. Referrals from the Internal Revenue Service.

5. Information obtained in the Watergate investigation about the sources and disposition of campaign funds used in the Watergate break-in and cover-up.

6. Newspaper articles, letters from citizens (many of them anonymous), and similar sources.

A variety of investigative methods were used. The prosecutors interviewed major Republican and Democratic fundraisers, including Herbert Kalmbach of FCRP, who cooperated with the office under an agreement involving his guilty plea to two charges (described elsewhere in this section). Agents of the FBI and IRS examined the campaign financial records of the major Presidential candidates and those Congressional candidates whose campaign finances, for various reasons, became relevant to matters directly within the jurisdiction of the Special Prosecutor. The prosecutors sent letters to about 50 known contributors asking them to telephone the office and answer certain questions. Many contributors were interviewed in person in WSPF's offices. FBI agents interviewed hundreds of employees and financial officers of corporations and unions and examined bank and corporate records; IRS agents took similar steps in cases that seemed to involve possible tax violations. In some cases, particularly when there was a suspicion of an explicit *quid pro quo* relationship between contributions and Government actions, WSPF attorneys conducted interviews of contributors, fundraisers, and Government officials. Witnesses were also called before the grand jury, especially when it appeared that attempts were being made to obstruct an investigation.

An important source of information in these inquiries was the disclosure by a number of corporations of their own illegal contributions. On July 6, 1973, American Airlines' board chairman told WSPF and publicly announced that the corporation had made an illegal contribution of corporate funds to the President's re-election campaign. Special Prosecutor Cox then issued a public invitation to other corporate executives to make similar disclosures, promising that:

[W]hen corporate officers come forward voluntarily and early to disclose illegal political contributions to candidates of either party, their voluntary acknowledgement will be considered as a mitigating circumstance in deciding what charges to bring.

Several corporations responded to this invitation shortly after it was issued, and others made similar disclosures in the ensuing months (in some cases after learning that they were under investigation). The corporations were required to disclose all corporate contributions to candidates for Federal office within the period of the then statute of limitations (1968-1973). The corporations were also required to disclose the basic method they had used to generate the contributed funds, including accumulations of cash in political "slush funds," usually from overseas sources, and the use of bonus payments and expense accounts to reimburse employees for contributions made in their own names. Interviews were conducted to determine those corporate officers who were aware of, or authorized, the contribution and also to learn what matters the corporation had pending before Federal Government agencies. The prosecutors also investigated the possibility of pressure on employees to donate to corporate "good Government funds" which could be used to make otherwise legal political contributions. In addition to the criminal charges WSPF brought against such corporate "volunteers," other agencies such as IRS and the Securities and Exchange Commission conducted investigations and took action as a result of these disclosures to WSPF.

On October 17, 1973, Cox announced an office policy on bringing charges against corporate officers who had made voluntary disclosure of corporate contributions: the corporation would be charged with violating Section 610 of Title 18 of the U.S. Code, which prohibits corporate contributions, and the primarily responsible corporate officer would be charged under the same statute with consenting to the making of such a contribution. The officer's cooperation in bringing the violation to WSPF's attention would be reflected in a one-count misdemeanor charge of "non-willful" consent, as distinct from the felony of "willful" consent, and in a decision not to charge other officers or include additional counts. Variations of this pattern would be based on unusual degrees of cooperation, on obstructive conduct, or on other unique circumstances. The corporations which made voluntary full disclosure of illegal contributions at a point when little or no investigative work had been done regarding their activities were charged and sentenced as follows:

—On October 17, 1973, American Airlines pleaded guilty to a one-count violation of Section 610 and received a fine of \$5,000. The board chairman was not charged because he had been the first corporate officer to make such a disclosure, and had done so before Cox had issued his invitation.

—On the same date, Goodyear Tire and Rubber Company pleaded guilty to one count of violating Section 610 and was fined \$5,000; the Chairman of Goodyear, Russell DeYoung, pleaded guilty to a one-count misdemeanor, Section 610 violation, and was fined \$1,000.

—On the same date, Minnesota Mining and Manufacturing Company pleaded guilty to a one-count Section 610 violation and was fined \$3,000; the company's chairman, Harry Heltzer, pleaded guilty to a one-count misdemeanor of violating Section 610 and received a \$500 fine.

—On November 12, 1973, Braniff Airways Inc., pleaded guilty to one count of violating Section 610 and was fined \$5,000; Braniff's chairman, Harding L. Lawrence, pleaded guilty to a one-count misdemeanor, Section 610 charge, and was fined \$1,000.

—On November 13, 1973, Ashland Petroleum Gabon Corp., a subsidiary of Ashland Oil, Inc., pleaded guilty to a one-count Section 610 violation and was fined \$5,000. Because his disclosure had closely followed American Airlines, Ashland's chairman, Orin E. Atkins, was allowed to plead *nolo contendere* to a one-count Section 610, misdemeanor charge and was fined \$1,000.

—On the same date, Gulf Oil Corporation pleaded guilty to one count of violating Section 610 and received a \$5,000 fine; Claude C. Wild, Jr., a vice-president of Gulf, pleaded guilty to a one-count misdemeanor under Section 610 and was fined \$1,000.

—On December 4, 1973, Phillips Petroleum Company pleaded guilty to one count of violating Section 610 and was fined \$5,000; chairman William W. Keeler pleaded guilty to a one-count misdemeanor, Section 610 violation and received a \$1,000 fine.

—On December 19, 1973, Carnation Company pleaded guilty to a one-count Section 610 violation and was fined \$5,000; its chairman, H. Everett Olson, pleaded guilty to a one-count misdemeanor violation of Section 610 and received a \$1,000 fine.

—On March 7, 1974, Diamond International Corporation pleaded guilty to a one-count violation of Section 610 and received a \$5,000 fine; Ray Dubrown, the corporation's vice president, pleaded guilty to a one-count misdemeanor under Section 610 and was fined \$1,000.

—On June 27, 1974, National By-Products, Inc., pleaded guilty to one count of violating Section 610 and was fined \$1,000. The responsible officer was not charged because the contribution had been very small, his disclosure had been motivated entirely by conscience, and under the circumstances of the contribution, success in an investigation here had been highly unlikely.

—On October 8, 1974, Greyhound Corporation pleaded guilty to a one-count, Section 610 violation and was fined \$5,000. No corporate officer was charged because there was substantial evidence that those involved had believed their conduct to be legal and had relied on the advice of counsel to that effect.

—On December 30, 1974, Charles N. Huseman, of HMS Electric Corporation, pleaded guilty to a one-count violation of Section 610 as a misdemeanor and was fined \$1,000. The corporation was not

charged because it had been acquired by another corporation and dissolved after the violation.

—On January 28, 1975, Ratrie, Robbins, and Schweitzer, Inc. pleaded guilty to a one-count Section 610 violation and was fined \$2,500. Harry Ratrie and Augustus Robbins, III, each pleaded guilty to a one-count, Section 610 misdemeanor and received a suspended sentence. Two officers were charged because they appeared to be equally culpable.

As the work of the task force progressed, it became clear that there were different degrees of voluntary cooperation. The early volunteers were aware that they might face investigation because their names or the names of their corporations appeared on campaign records WSPF had obtained. Rather than constructing "cover stories," they decided to acknowledge their conduct. Some other "volunteers" did not have to guess that their contributions might be under investigation. WSPF had already begun active inquiries when they decided to make their disclosures. These belated "volunteers" were charged and sentenced as follows:

—On May 1, 1974, Northrop Corporation pleaded guilty to a one-count violation of Section 611 of Title 18, which prohibits campaign contributions by Government contractors, and was fined \$5,000. Northrop was charged under this statute because a large percentage of its total business was under Government contract. Northrop's chairman, Thomas V. Jones, pleaded guilty to a charge of willfully aiding and abetting in the illegal contribution and was fined \$5,000. James Allen pleaded guilty to a one-count misdemeanor under Section 610 and received a \$1,000 fine. Two officers were charged, one of them with a felony, because of obstructive conduct in the course of the investigation.

—On May 6, 1974, Lehigh Valley Cooperative Farmers pleaded guilty to one count of violating Section 610 and was fined \$5,000. The Cooperative's president, Richard L. Allison, pleaded guilty on May 17 to a one-count, Section 610 misdemeanor and received a \$1,000 fine which was suspended, and Francis X. Carroll pleaded guilty May 28 to a misdemeanor charge of aiding and abetting a violation of Section 610, receiving a suspended sentence. Two persons were charged in this matter because of relatively minor obstructive conduct.

—On September 17, 1974, LBC & W, Inc., pleaded guilty to a one-count violation of Section 611 and received a \$5,000 fine; a substantial portion of the firm's total business was under Government contract. William Lyles, Sr., pleaded guilty to two misdemeanor counts of violating Section 610 and was fined \$2,000.

—On October 23, 1974, Time Oil Corporation pleaded guilty to two counts of violating Section 610 and was fined \$5,000; its

president, Raymond Abendroth, pleaded guilty to two misdemeanor Section 610 counts and was fined \$2,000.

—On December 20, 1974, Ashland Oil, Inc. pleaded guilty to five counts of violating Section 610 and was fined \$25,000. This second prosecution of Ashland resulted from its failure to make full disclosure during the initial investigation. No corporate officer was charged because the officers were not the persons primarily responsible for withholding the information.

Some alleged corporate donors were prosecuted solely as a result of investigations with no voluntary disclosures. A referral from the IRS resulted on October 19, 1973, in the charging of Dwayne Andreas and the First Interceanic Corporation with four counts of violating Section 610. They were acquitted by a judge in Federal court in Minnesota on July 12, 1974.

An investigation into the contribution activity of American Ship Building Company resulted in the indictment on April 5, 1974, of the corporation and its chairman, George M. Steinbrenner, III, on a charge of conspiring to make corporate contributions to several candidates and campaign organizations. In addition, the corporation was charged with one count of violating Section 610, and Steinbrenner was charged with five felony counts of violating Section 610, two counts of aiding and abetting the making of false statements to criminal investigators, four counts of obstructing justice and two counts of obstructing a criminal investigation. John H. Melcher, Jr., another officer of the corporation, pleaded guilty April 18, 1974, to a charge of being an accessory after the fact to a corporate contribution and was fined \$2,500. After plea negotiations with WSPF, American Ship Building pleaded guilty on August 23 to the charges against it and was fined \$20,000. On the same date, Steinbrenner pleaded guilty to the felony conspiracy charge and to a charge of being an accessory after the fact to a corporate contribution, receiving a fine of \$15,000. The remaining charges against Steinbrenner were dropped following his plea of guilty.

The investigation into the sources of campaign funds which came to be used in the Watergate cover-up resulted in a guilty plea of Tim M. Babcock, an executive of Occidental Petroleum Corp. and former Governor of Montana, on a charge of making a campaign contribution in another person's name, on December 10, 1974. He was sentenced to a year in prison, with all but 4 months suspended, and a \$1,000 fine. His sentence is now on appeal on the question of whether the particular sentencing provision applied here legally permits imprisonment.

The investigations into corporate and union contributions and other illegal activities by donors of campaign funds resulted in no additional prosecutions as of September 1975 (although a few matters are still open). A few other corporations were found to have made relatively small contributions of corporate funds and were not pros-

ecuted because of the small amounts involved and for other reasons detailed in Chapter 2. The prosecutors reviewed all contributions identified with unions or their officers in search of patterns that might indicate a union source for individual contributions, but found only one suspicious pattern; the investigation did not develop sufficient evidence to bring charges.

The task force also looked into possible illegal conduct of people and organizations receiving campaign funds on behalf of candidates. The investigation of American Ship Building Company's contributions resulted in a plea of guilty by "DKI for '74," a committee supporting the re-election of Senator Daniel Inouye, to a charge of failing to report a contribution. The sentence was suspended. The investigation and eventual disclosure of a contribution of Time Oil Corporation resulted in a plea of guilty on June 11, 1975, by former Representative Wendell Wyatt, who had headed the Oregon Committee to Re-Elect the President, to a charge of failing to report a campaign expenditure. He was fined \$750.

The investigation of the activities of the Finance Committee to Re-Elect the President resulted in a plea of guilty by its former chairman, Maurice Stans, who had served as Secretary of Commerce in the Nixon Administration, to three counts of failure to report contributions and expenditures of the Committee and two counts of accepting corporate contributions, all misdemeanors. Stans was fined \$5,000. No criminal charges were brought against other FCRP officials or fundraisers for other 1972 candidates.

The task force also investigated over 30 allegations of improper influence on Government actions by contributors to the President's 1972 campaign, including Justice Department actions in antitrust matters, Environmental Protection Agency decisions in enforcement proceedings, Price Commission and Cost of Living Council rulings, the awarding of bank charters, decisions on airline routes and mergers, decisions on product safety standards, the exercise of the President's clemency power, the handling of a criminal prosecution, decisions on oil import allocations, and a decision to raise milk price supports (discussed elsewhere in this section). None of these inquiries developed sufficient evidence to support criminal charges.

Other allegations involving Democratic campaign financing were investigated, including a charge that the Democratic National Committee had received corporate contributions in the form of discounts in the settlement of its 1968 campaign debt. These inquiries did not produce sufficient evidence to support criminal charges. An investigation into the failure of the Democratic National Committee to report correctly a large contribution resulted in no charges because the statute of limitations, as amended retroactively in 1974, barred prosecution.

Investigation Into Alleged Sales of Ambassadorships

Information obtained from major campaign contributors and fundraisers in early summer 1973, and a document obtained from the White House, suggested that officials of the White House and the Finance Committee to Re-Elect the President (FCRP) might have promised ambassadorial appointments in return for large campaign contributions. A full-scale inquiry into the alleged sales of ambassadorships commenced in the autumn of 1973.

The investigation centered on possible promises to certain individuals who had made large contributions to President Nixon's re-election. Because the prosecutors felt that favor-selling public officials would be more culpable by reason of their public trust than favor-seeking contributors, if such illegal conduct had occurred, the investigation initially focused on obtaining the testimony of the contributors. However, the first admission that an ambassadorship had been promised in return for a campaign contribution came from fundraiser Herbert Kalmbach, who pleaded guilty on February 24, 1974, to a charge of promising employment as a reward for political activity. Kalmbach, who pleaded guilty to another charge (described elsewhere in this section) at the same time, was sentenced to 6-months imprisonment.

On March 14, 1974, the grand jury subpoenaed White House documents relating to the possible appointments and contributions of four persons, and the White House supplied a number of documents which provided additional evidence. Some of the contributors eventually cooperated with the office and furnished information, as did former FCRP chairman Maurice Stans in connection with his guilty plea to other charges (described elsewhere in this section). The contributors, former White House officials, and campaign fundraisers were questioned before the grand jury. Although contributors of large campaign sums obviously received Administration responses to their desires to serve as ambassadors, a crime is not proved unless the prosecution can show a prior *quid pro quo* arrangement, i.e., a prior commitment of support for the position in exchange for a forthcoming contribution. Such proof is available only if one of the participants in such a conversation admits the express commitment. However, each official and fundraiser involved denied having made promises of appointments and WSPF was unable to prove the contrary. Although one matter was still under investigation as this Report was written, the evidence in other matters was insufficient to support any additional criminal charges.

"Townhouse" Investigation

Between 1970 and 1972, press accounts indicated that the White House had sponsored a secret program for raising and disbursing funds

for selected Republican candidates in the 1970 Congressional elections. This program operated from a Washington townhouse and ultimately became known as "Townhouse." The operation was not thought to be a matter within WSPF's jurisdiction until August 1973, when a separate investigation brought to light more details about the manner in which it had been conducted. During the early fall of 1973, Attorney General Richardson informally referred the "Townhouse" investigation to WSPF, and the referral was formalized by Acting Attorney General Bork in January 1974.

The "Townhouse" inquiry began with interviews of Jack Gleason, a former White House aide who had played a principal role in the project. He supplied records showing that over \$3,000,000 had been received and disbursed during the operation. Subsequent investigation revealed these details: fundraiser Herbert Kalmbach had obtained pledges of large amounts from various contributors, informing them that Gleason would contact them about payment; Gleason then instructed the contributors to send their checks to him, and he forwarded the funds to particular campaigns as instructed by members of the White House staff; he reported principally to White House aide Harry Dent who, in turn, reported to other White House officials.

After research into the legality of the operation, the prosecutors concluded that those involved had constituted a political committee which had unlawfully failed to elect officers and file financial reports. Their failure to do so, the secrecy with which they conducted their operations, and the large amounts of money involved led the prosecutors to initiate a grand jury investigation in the fall of 1973. In connection with the grand jury's inquiry, the prosecutors asked the White House to supply additional "Townhouse" records which had been transferred to White House files. The records were not produced until March 1974.

Kalmbach, who was cooperating with WSPF in a number of its investigations, pleaded guilty on February 25, 1974, to a felony violation of the Corrupt Practices Act. Thereafter, he furnished additional documents from his files regarding the "Townhouse" project and provided further information during office interviews and grand jury appearances.

On November 15 and December 11, 1974, respectively, Gleason and Dent pleaded guilty to misdemeanor violations of the Corrupt Practices Act. Both received sentences of 1 month's probation.

The prosecutors also looked into the possible criminal liability of others involved in the 1970 "Townhouse" project, but brought no further charges against them.

Milk Fund Investigation

In late July 1973, WSPF's campaign contributions task force began investigating possible illegal activities involving Associated Milk Producers, Inc. (AMPI), the Nation's largest organization of dairy farmers. The office's interest in the matter resulted from press reports and the filing of a civil suit by Ralph Nader alleging that a 1971 Administration decision to raise milk price supports had been influenced by an AMPI commitment of substantial funds to President Nixon's 1972 campaign.

The attorneys assigned to this investigation functioned for most purposes as a separate task force within the office. They began by interviewing AMPI's general manager and other employees, and examining evidence obtained in the Nader suit. Then, having learned from a former AMPI employee of a series of diversions of AMPI funds which evidently had been contributed illegally to various political candidates, they obtained grand jury testimony by AMPI officials Bob Lilly and Robert Isham who, under immunity, provided information concerning four areas of possible criminal conduct by persons associated with AMPI.

The first of these areas was the allegation that AMPI had concealed a 1969 contribution of \$100,000 to President Nixon's 1972 campaign by using a "dummy" to deliver the funds. Investigation of the 1969 payment resulted in charges against AMPI and Harold Nelson, its former general manager. Nelson's plea of guilty, described more fully below, included admissions that he had made the payment in order to gain "access" to the White House for AMPI and that he had attempted to conceal the ultimate source of the contribution.

On the basis of information they had received, the prosecutors also investigated other political contributions by AMPI. The investigation uncovered evidence of numerous contributions, usually made through conduits to hide the true source of the money. For example, it appeared that AMPI employees, attorneys, or consultants had made contributions in their own names and then, by prior agreement, had been reimbursed by AMPI in the form of "bonuses" or fees. AMPI also disguised political contributions by using corporate funds to pay for services provided to candidates by third parties, and assigning its employees to work in favored campaigns while continuing to be paid by AMPI. The evidence gathered in this part of the investigation led to a number of criminal dispositions:

—On July 24, 1974, David Parr, formerly special counsel to AMPI, pleaded guilty to a felony conspiracy to make corporate contributions. In acknowledging his guilt, he admitted his role in causing AMPI to contribute a total of \$220,000 to eight different candidates in 1968, 1970, and 1972. Parr was fined \$10,000 and sentenced to 2-years imprisonment. All but 4 months of the prison term were suspended.

—AMPI's former general manager Nelson pleaded guilty on July 31, 1974, to felony charges of conspiracy to make corporate contributions and making an illegal payment to a public official. He admitted that he had caused AMPI to make contributions totaling \$330,000 to seven different campaign funds in 1968, 1969, 1970 and 1972, and had approved a payment to another party in 1971, allegedly for the benefit of John Connally, Secretary of the Treasury. Nelson was sentenced to pay a \$10,000 fine and serve a 2-year prison term, with all but 4 months suspended.

—On August 1, 1974, AMPI pleaded guilty to conspiracy to make corporate campaign contributions, and the making of five such contributions totalling \$280,000, and was fined the \$35,000 maximum.

—Norman Sherman and John Valentine, who had operated a computer service and had received \$84,000 from AMPI for services provided to several candidates, each pleaded guilty on August 12, 1974, to misdemeanor charges of aiding and abetting illegal corporate contributions. Each was fined \$500.

—Jack Chestnut, the manager of Hubert Humphrey's 1970 Senate campaign in Minnesota, was indicted on December 23, 1974, for feloniously aiding and abetting a corporate contribution by arranging for AMPI to pay for the services of a New York advertising firm to the Humphrey campaign. At WSPF's request after the indictment, Chestnut's trial was conducted in May 1975 by the U.S. Attorney's office for the Southern District of New York, and resulted in his conviction and a 4-month prison sentence. The conviction is now on appeal.

—On December 19, 1974, Stuart Russell, an Oklahoma City attorney retained by AMPI, was indicted for conspiracy and two counts of aiding and abetting the making of corporate contributions. The charges were based on evidence of his major role as a conduit for political contributions of AMPI funds. He was convicted in July 1975 on all three felony counts after a trial in San Antonio, Texas, and received a 2-year prison sentence. His appeal is pending.

The third area of investigation involving AMPI concerned events surrounding the Administration's 1971 decision to raise milk price supports and AMPI's commitment of funds for the 1972 campaign, but despite an extensive probe, the prosecutors were unable to obtain sufficient evidence to recommend criminal charges against anyone.

The final area of the investigation of AMPI's activities concerned the allegation that former Treasury Secretary Connally had accepted illegal payments from AMPI following the Administration's 1971 decision to increase milk price support levels. This investigation resulted in the charge against Nelson, described above, to which he pleaded guilty. In addition, Jake Jacobsen, a Texas attorney formerly retained by AMPI, was charged on February 21, 1974, with having made false declarations before the grand jury. This charge was dis-

missed as technically defective on May 3, but Jacobsen was indicted again on July 29, 1974, for making an illegal payment to a public official. He pleaded guilty on August 7 and is awaiting sentence. Connally was also named as a defendant with Jacobsen in the July 29 indictment. He was charged with receiving illegal payments on two occasions while he was Secretary of the Treasury, conspiring with Jacobsen to commit perjury and obstruct justice in connection with investigations of those payments, and making false declarations to the grand jury. Prior to trial, the court ruled that the charges of accepting illegal payments should be tried first and separately. Connally was tried on these charges and found not guilty by a jury on April 17, 1975. Because the jury had also heard all the evidence the prosecutors possessed for any future trial on the other charges against Connally, those charges were dismissed on April 18.

Hughes-Rebozo Investigation

In October 1973, WSPF began receiving from the Internal Revenue Service the preliminary results of its investigation into an unreported cash contribution of \$100,000 by industrialist Howard R. Hughes delivered by a Hughes representative to Charles G. Rebozo, a close friend of President Nixon. The funds had been delivered in two equal installments in 1970, but according to Rebozo's public explanation, the identical cash had been returned to Hughes in June 1973.

Since July 1973, the Senate Select Committee had also been conducting an investigation which was essentially parallel to that of the IRS. In December 1973 and thereafter, the Committee questioned numerous witnesses in Executive Session about the Hughes contribution. In late March one witness, Herbert W. Kalmbach, formerly the personal attorney for Richard Nixon, alleged that on April 30, 1973, Rebozo had told him of having disbursed some of the Hughes money to a friend and family members of the President, and others. Investigators also searched to see whether the Hughes cash that had been returned by Rebozo in 1973 bore serial numbers that indicated the cash had been in public circulation at the time of the alleged deliveries by Hughes' representative to Rebozo in 1970.

On the basis of Senate and IRS information, the Special Prosecutor's office launched a wider investigation. Although the charter of the Special Prosecutor's office included authority to investigate all matters arising out of the 1972 Presidential election campaign, for which, according to Rebozo, the Hughes contribution had been intended, it was determined that there should be some clarification of WSPF's jurisdiction to investigate the matter. By letter dated April 15, 1974, the Attorney General specifically assigned to the Special Prosecutor the responsibility for conducting an investigation into the Hughes contribution and related matters. At about the same time,

the Internal Revenue Service referred its investigation to the Special Prosecutor along with an interim report recommending a grand jury inquiry to resolve conflicts in the testimony of witnesses about the delivery and purpose of the Hughes money, as well as its possible use, and to seek evidence of other such secret contributions.

Three broad categories of inquiry were pursued: any possible bribery and campaign contribution violations, any income tax violations, and any perjury or false statements arising from prior testimony. A grand jury investigation was begun in late April 1974 with the issuance of numerous subpoenas for documents.

The Senate investigation also continued and in May 1974, a former aide to H. R. Haldeman, Lawrence M. Higby, testified before the Committee that Haldeman had described to him an offer which the President had made to pay \$400,000 from funds under Rebozo's control, for Haldeman's anticipated legal fees.

The Select Committee's investigation ended in July 1974, when the Committee published a lengthy staff report describing the information disclosed during its investigation. The report included allegations: (1) that in June 1972 Rebozo had used funds, which were left from the 1968 campaign and kept in one of his bank accounts, to pay for diamond earrings for Mrs. Nixon; and (2) that Rebozo had paid for a swimming pool and related improvements to the President's Key Biscayne residences with about \$25,000 cash from unknown sources in 1972.

During May and June 1974, the Special Prosecutor's office obtained all documents from the files of the Senate Select Committee and the Internal Revenue Service relating to Rebozo's finances. On the basis of these materials, the grand jury inquiry was broadened and nearly 200 subpoenas for documents were issued between April 1974 and July 1975. In addition, 28 witnesses testified before the grand jury, 75 persons were questioned by the Special Prosecutor's office and 47 persons were interviewed in the field by a team of specially detailed agents of the Internal Revenue Service. In all, 123 different persons were questioned, many of them repeatedly. Included among those questioned were officials and employees of the White House, the Finance Committee to Re-elect the President, Hughes' Summa Corporation, the Key Biscayne Bank, and many others.

The IRS team also assisted the Special Prosecutor's office in evaluating the voluminous financial records obtained. Between April and December 1974, the agents and Assistant Special Prosecutors analyzed thousands of pages of records received from more than 240 sources.

Secondary sources of information also were systematically and exhaustively utilized. This included records from banks, accountants, attorneys, various business partners and associates, business firms, and so forth. Second, voluminous records were reviewed of telephone

calls, travel, meetings with Administration officials, and correspondence with various persons. Third, persons suspected of making secret contributions were questioned and their documents reviewed. Fourth, tapes and hundreds of memoranda and other documents from the White House files were studied for any references to relevant financial transactions or any actions involving soliciting or use of funds for President Nixon.

Extensive investigation was undertaken concerning the source and application of all funds which required examination in order to resolve the matters raised in the Senate Select Committee materials. Documents and information were obtained which had not been available to the Committee, and they helped resolve some questions which were raised by the Senate report.

Investigation was also pursued into the suggestion in an April 17, 1973, Presidential tape that Rebozo maintained a secret fund of about \$300,000. At the trial of the Watergate cover-up defendants, prosecutors used a transcript of this tape of a conversation among President Nixon and his aides H. R. Haldeman and John D. Ehrlichman. In the conversation, President Nixon offered to pay \$200,000 to \$300,000 for their legal fees from funds to be provided by Rebozo.

After all investigation was completed, and the evidence had been evaluated by the prosecutors who ran the investigation and by the General Counsel's office of the Internal Revenue Service, it was concluded by the prosecutors that the evidence would not support an indictment.

National Hispanic Finance Committee Investigation

Information provided by the Senate Select Committee indicated the possibility that former staff members of the White House, the Committee to Re-Elect the President, and the National Hispanic Finance Committee (an arm of the Finance Committee to Re-Elect the President) had tried to influence the Government's grant-making and contracting processes to obtain the support of members of the Spanish-speaking community for the President's reelection. Although these allegations were similar to those related to the Administration's "Responsiveness Program" (see discussion of "Responsiveness Program"), they were investigated by personnel of a different task force because they seemed to involve principally representatives of the President's campaign organization.

WSPF investigated several allegations of possible criminal conduct including:

—That the award of Government contracts to a particular firm had been curtailed because the firm's president had declined to support President Nixon's re-election campaign; one means of this curtailment had been the "graduation" of the firm beyond the eligibility require-

ment for the Small Business Administration (SBA) program which awards Government contracts to minority-owned firms outside the normal bidding process.

—That a builder who was having legal difficulties, in a housing program for low-income families subsidized by the Federal Housing Administration, had been solicited for a \$100,000 contribution in return for the clearing up of his legal problems.

—That a prominent Mexican-American citizen had been offered a Federal judgeship in exchange for a campaign contribution.

—That improper influence, possibly involving persons connected with the Hispanic Finance Committee, had existed in the awarding of grants, SBA loans, and Government contracts.

These inquiries consumed about one year of an attorney's time, but did not produce sufficient evidence to support criminal charges.

OFFICE OF COUNSEL TO THE SPECIAL PROSECUTOR

The office of counsel to the Special Prosecutor was organized to deal with numerous legal and policy issues, many of them novel, that confronted the Special Prosecutor's office. These issues required counsel to function in four basic areas: giving legal advice to task forces, managing appeals and civil matters, advising the Special Prosecutor on legal and policy questions, and assisting in liaison with other agencies.

Legal Advice to Task Forces. The counsel's office gave each task force advice on particular legal issues that arose during the course of investigations, helped design charges based on the facts developed and the applicable law, and provided legal assistance during trials. In addition to providing the legal research needed to conduct investigations and prosecutions, the Counsel's office insured that the task forces would take consistent legal positions on common issues.

Management of Litigation. The counsel's office supervised the preparation of and reviewed all pretrial and post-trial motions and appellate briefs (also including appeals from the 1973 convictions of the Watergate break-in defendants) in prosecutions and appeals stemming from WSPF trials. Counsel also conducted some of the Special Prosecutor's litigation. For example, the Counsel directed litigation over grand jury and trial subpoenas for Presidential tapes, the grand jury report submitted to the House Judiciary Committee in connection with its impeachment inquiry, and access to White House tapes and documents after President Nixon's resignation.

Legal and Policy Advice to the Special Prosecutor. The Office of Counsel regularly consulted with and advised the Special Prosecutor on legal issues requiring his decision. In this regard, counsel reviewed each indictment before it was presented to the Special Prosecutor for

his consideration and gave his recommendation as to which, if any, charges should be brought in each proposed prosecution or other disposition of liability (such as a guilty plea). In each case, this involved a review of the prosecution memorandum prepared by the task force and an analysis of the facts developed in light of the applicable law to determine the likelihood of successful prosecution. The Office also helped formulate standards for questioning witnesses, bringing criminal charges, and accepting guilty pleas. Finally, counsel directed all research into the question of whether an incumbent President could be indicted and into the validity of the pardon granted to former President Nixon.

From time to time, the Counsel's office was also consulted on legal and policy issues not directly related to the prosecution function. These included relationships with the White House and the issue of executive privilege generally, relationships with the Senate Select Committee and the House Judiciary Committee concerning the exchange of information and the effect of their proceedings on the office's prosecutions (particularly with regard to pre-trial publicity). The Counsel's office also had a major role in WSPF's review of pending legislation related to the Special Prosecutor's work, such as the Grand Jury Extension Act, proposed legislation to establish an independent special prosecutor, and proposed legislation concerning the scope of the Special Prosecutor's final report.

Liaison With Other Agencies.—In addition to assistance in liaison with other agencies, including the White House counsel's office, divisions of the Department of Justice and Congressional staffs, Counsel's office acted as liaison with bar associations seeking information for use in bar disciplinary proceedings involving attorneys who had been convicted or investigated by WSPF.

Relations With Presidents and White House Staffs

EFFORTS TO OBTAIN EVIDENCE

Early Requests for Documents

During his confirmation hearings in May 1973, Attorney General-designate Elliot Richardson expressed his belief that the Special Prosecutor would gain access to Presidential papers without litigation. He said:

[F]rom all I have seen and from the President's statements, he intends that whatever should be made public in terms of the public interest in these investigations should be disclosed.

Nevertheless, at Cox's insistence, in order to formalize and reinforce his independence to challenge any withholding of information, the guidelines for his office granted the Special Prosecutor "full authority" in "determining whether or not to contest the assertion of 'Executive Privilege.' "

The first exchange of letters occurred on May 30, when Cox wrote to White House counsel J. Fred Buzhardt to confirm an earlier telephone request that all White House files related to the Special Prosecutor's investigation be kept "secure." Buzhardt responded that certain files had been placed under the protection of the FBI on April 30, but that the "handling, protection and disposition of Presidential Papers is, of course, a matter for the decision of the President." In the months that followed, the White House repeatedly delayed their responses to the Special Prosecutor's requests for documents by citing the need for a personal decision of the President.

On June 6, Cox and Special Consultant James Vorenberg met with Buzhardt, White House counsel Leonard Garment, and Charles Alan Wright, a consultant to the White House counsel's office. At this meeting Wright stated his understanding that the doctrine of executive privilege gave the President an absolute right to refuse to disclose in either judicial or congressional proceedings any confidential communications between the President and his advisers and any memoranda generated by White House staff members concerning the constitutional duties of the President.

The issue of executive privilege soon arose in a concrete context. Assistant Attorney General Henry Petersen refused to discuss with the Special Prosecutor the exact content of conversations that he had had with the President, on the grounds that the conversations were perhaps subject to attorney-client privilege. Cox requested that Buzhardt determine whether the President would assert any "claim of legal privilege or other confidential relationship" that would prevent Petersen or former Attorney General Richard Kleindienst from fully disclosing their relevant conversations with him. In addition, Cox requested access to the tape recording of an April 15 conversation between the President and former White House counsel John Dean; evidence indicated its prime relevance to the cover-up investigation. In the next few days Cox also made requests for: (a) an inventory of the files of 12 Nixon aides and Administration officials; (b) all logs and diaries reflecting meetings and telephone calls between the President and 15 specified individuals; and (c) a letter explaining the administrative organization and procedures of the White House and listing the names of staff members of key Nixon aides.

Buzhardt responded with President Nixon's view that all of his discussions with Petersen and Kleindienst were within "both executive privilege and the attorney-client privilege," but said that the President had decided to waive all applicable privileges as to these discussions. With respect to the conversation between the President and Dean on April 15, Buzhardt stated that the President, when he had offered that tape to Petersen, had been referring only to the President's dictation of his own recollections of the conversation. Buzhardt's response concluded that "it would, of course, not be appropriate to produce that tape."

In responding to Buzhardt on June 20, Cox objected on two grounds to the President's denial of the tape recording of his recollections: first, since the President had offered to allow Petersen to listen to the tape, there could be no proper reason for withholding it from the Special Prosecutor who had assumed control of the Watergate investigation; second, the conversation was "critically important" to the task of untangling the complicated allegations about an attempt to cover up responsibility for the Watergate break-in. As Cox put it:

In this case the witness is the President. Whatever may be the power of the Judicial Branch to subpoena him, it is certainly appropriate to obtain information from the President in ways less likely to interfere with the performance of his high responsibilities; and it is for this reason that I have thus far confined myself to a request for his recorded recollection [and not made a request for his personal testimony]. If the President wants the full facts developed without fear or favor—as I assume must be the case—then surely he must be willing for us to have such potentially

important information without argument about any privilege he might theoretically assert.

During the next two weeks Cox also requested access to the "ITT" file maintained by Fred Fielding, one of Mr. Dean's assistants.

By this time the White House had produced some documents in response to earlier requests. On June 22, WSPF received a list of Petersen's and Attorney General John Mitchell's meetings and telephone calls with the President. A week later, another letter explained the White House staff organization and enclosed a list of the staff members of various key personnel. In addition, WSPF received a copy of the list kept by Rose Mary Woods, the President's secretary, of pre-April 7, 1972, cash contributors to the Nixon campaign. There was no response, however, to Cox's request for inventories of White House files related to Watergate, the Fielding ITT file, or the President's taped recollections of his April 15 meeting with Dean. Nor was there any response to Cox's request of June 27 that the President provide a detailed written narrative responding to Dean's Senate Select Committee testimony.

Early in July, the office, in suggesting the need for delay in the Watergate civil suits, represented in court its intention to bring an indictment in the Watergate case no later than September. Nevertheless, a thorough investigation required access to additional White House files. On July 10, Cox wrote Buzhardt that "the delay [in responding to our requests] is now hampering our investigation of possible criminal offenses by high Government officials." Reminding Buzhardt that he had been "very patient—perhaps too patient—in seeking voluntary cooperation," Cox stated that he knew of no privilege that "would entitle the President to withhold documentary evidence of criminal misconduct on the part of Government employees or the White House staff." He warned that assertion of a privilege is "bound to be damaging to the President personally and to the office of the Presidency." Cox told the White House in unequivocal terms:

I have repeatedly given public assurance that I would report upon any difficulty encountered in obtaining from the White House all information material to our investigation. I am reluctant either to take that course or to seek legal process before the opportunities for cooperation have been exhausted. Further delay would be so prejudicial to our work, however, that I must insist upon a prompt, categorical response to each of my prior requests and to the other requests for specific papers that I shall undoubtedly have occasion to make (including my letter of today's date).

As the letter indicated, Cox also made a request on the same date for additional information from the White House:

(1) logs showing telephone conversations and meetings on July 5 and 6, 1972, between the President and Clark MacGregor;

- (2) copies of "political matters memoranda" from Gordon Strachan to H. R. Haldeman, two former White House aides;
- (3) a copy of Dean's "miscellaneous intelligence" file;
- (4) a copy of the logs showing the specific items from the files that had been copied by former White House staff members after April 30, 1973; and
- (5) copies of any records of items inserted into the White House files by former White House aides John Ehrlichman or David Young after April 30, 1973.

The White House responded on July 21. Expressing "great regret" for the delays, the President's attorney claimed that his office had been extremely busy with the Senate Select Committee hearings and subpoenas in civil actions and that the requests of the Special Prosecutor raised questions that had to be resolved by the President. Citing the President's international obligations and recent poor health, Buzhardt promised an early response to Cox's letter, but cautioned that "obtaining a decision from the President on sensitive questions that only he can decide is often not a speedy process."

Buzhardt's letter must be read in the context of the events that preceded it, beginning with testimony of Alexander Butterfield.

Grand Jury Subpoena Duces Tecum

On July 16, Alexander Butterfield, previously the President's staff secretary, told the Senate Select Committee that an automatic tape recording system had been installed in the President's White House and Executive Office Building offices in early 1971. According to Butterfield, this system was capable of recording automatically all telephone conversations and meetings in either office.

The significance of the President's recording system was immediately apparent. John Dean had testified that a number of his meetings with the President had implicated the President and his high aides in the Watergate cover-up. The recordings could provide invaluable corroboration for Dean's description of the meetings, as well as support his credibility on other aspects of his testimony, or they could show that his statements had been untrue.

The Special Prosecutor was faced with two concerns in determining how to proceed. First, although Cox was generally optimistic that President Nixon, like all his predecessors in office, would abide by any final court determination, he was anxious to avoid a possible constitutional confrontation between the judicial and executive branches if the President were to disobey a court order to produce the recordings. Second, Cox was concerned that enforcement proceedings necessarily would involve substantial delays in the investigation.

Despite these concerns, Cox concluded that WSPF could not proceed with the Watergate investigation without taking all possible

steps to secure evidence that could be so important in determining responsibility for the Watergate cover-up.

Once he had decided to make a request for the recordings, Cox had to choose the conversations most essential to the investigation. A judicial decision would depend heavily on a balance between the need for confidentiality in deliberations of the Executive Branch and the need of the judicial process for evidence material to a criminal investigation and prosecution. Cox therefore chose the conversations that appeared essential to determining the truth or falsity of Dean's allegations before the Senate Select Committee. The tapes of the actual conversations would be crucial to the resolution of the grand jury's investigation. In addition, Cox picked those meetings which, from the available circumstantial evidence, would reveal the formation of any conspiracy—these included meetings of the President with Ehrlichman and Haldeman shortly after the break-in, one of the first conversations between the President and Mitchell after the break-in, and the meeting between the President and Mitchell on the day preceding Mitchell's resignation as director of CRP.

On July 18, Cox wrote to Buzhardt requesting access to the tape recordings of nine specified conversations. He emphasized "three essential aspects" of the request: first, the materiality of the recordings to the investigation of serious criminal misconduct; second, the lack of any separation of powers issue because the request was being made by a prosecutor within the executive branch, and not, for example, by the Senate Select Committee; and third, the confidentiality that attached to grand jury proceedings. On July 23, Charles Alan Wright responded with the President's instructions that it would not be possible to make available the requested recordings, for reasons similar to those stated to Senator Ervin in denying a Senate Select Committee request. In addition, Wright argued that as part of the executive branch, the Special Prosecutor was subject to the direction of the President or the Attorney General and could not have access to Presidential papers unless the President saw fit to grant access. He argued:

It is for the President, and only for the President to weigh whether the incremental advantage that these tapes would give you in criminal proceedings justifies the serious and lasting hurt that disclosure of them would do to the confidentiality that is imperative to the effective functioning of the Presidency. In this instance the President has concluded that it would not serve the public interest to make the tapes available.

In a letter to Senator Ervin written the same day, the President indicated that "[i]f release of the tapes would settle the central questions at issue in the Watergate inquiries, then their disclosure might serve a substantial public interest that would have to be weighed very heavily against the negatives of disclosure." He claimed that

the tapes "would not finally settle the central issues," but that he had personally listened to a number of the tapes and they were "entirely consistent with what I know to be the truth and what I have stated to be the truth."

Upon receiving Wright's response, Cox announced at a press conference that he immediately would seek subpoenas to obtain the recordings. A subpoena returnable on July 26 was served immediately on the President's counsel.¹

On July 25, the President wrote to Chief Judge Sirica and refused to comply with Cox's subpoena. He said he was following the example of predecessors who had "consistently adhered to the position that the President is not subject to compulsory process from the courts," and stated that it would be "inconsistent with the public interest and with the constitutional position of the Presidency to make available recordings of meetings and telephone conversations in which I was a participant."²

The next morning, Cox explained to the grand jurors the President's refusal to comply with the subpoena and sought the grand jury's authorization to request an order from Chief Judge Sirica compelling the production of the tapes. Upon the unanimous vote of the grand jurors, the Special Prosecutor filed a petition for an order directing the President to show cause why the subpoenaed materials should not be produced. In the petition, the Special Prosecutor claimed that the grand jury had an enforceable right to access to the recordings, which were relevant and important to its investigations, and that the President, in a public statement on May 22, 1973, had waived any claim of executive privilege. (This statement authorized his aides to testify about Watergate before the Senate Select Committee.) Finally, the petition argued that it was the responsibility of the courts, and not the exclusive prerogative of the President, to determine whether a claim of privilege to withhold evidence from the courts was valid. After polling the grand jurors in open court and determining that it was their wish that the subpoena be enforced, Chief Judge Sirica signed the order to show cause, returnable on August 7.

¹ In addition to the tapes and related notes and memoranda, the subpoena called for the original of a memorandum on the termination of E. Howard Hunt as a White House consultant (a copy previously had been given to the FBI) and the "Political Matters Memoranda" prepared for Haldeman by Strachan. Cox believed that neither item was subject even to an arguable claim of privilege.

² Nevertheless, he stated that, like his predecessors, he would voluntarily make available relevant material where that would not be "inconsistent with the public interest." He wrote that he was "voluntarily transmitting for the use of the grand jury" the memorandum on Hunt's termination and Strachan's Political Matters Memoranda. (The Hunt termination memorandum was enclosed with the letter, but the Political Matters Memoranda were not. They were not made available to the Special Prosecutor until September.)

On the return date, President Nixon filed a special appearance in which he contended that the order should be vacated because the court lacked jurisdiction to compel the President to comply with a subpoena.³ The accompanying brief argued that compelled disclosure of the recordings not only would result in "severe and irreparable" damage "to the institution of the Presidency," but also would violate the constitutional doctrine of the separation of powers.

The Special Prosecutor replied to this brief on August 13, arguing that the courts, as the historic arbiters of the Constitution, have the final authority to determine whether the executive can be required to produce evidence for use in a judicial proceeding and that the President is not absolutely immune from orders requiring him to comply with constitutional duties, including the production of unprivileged evidence. Acknowledging that the courts had recognized a qualified privilege in the interest of promoting candid policy discussions among executive officials, the Special Prosecutor contended that the privilege did not apply where there was reason to believe that the discussions may have involved criminal wrongdoing, and that, under the circumstances, the need of the grand jury for the subpoenaed recordings outweighed the public interest served by the confidentiality of executive deliberations. Finally, the Special Prosecutor argued that any privilege attaching to the particular recordings had been waived by the President's consent to other disclosures of their content.

In his reply brief, the President claimed for the first time in court that he had ultimate responsibility for the prosecution of criminal cases and thus had ultimate control of what evidence would be produced for a criminal proceeding by the United States. The Special Prosecutor responded that the evidence was being sought by the grand jury, that the grand jury had independent authority to seek evidence wherever it might be, that the grand jury was not subject to the unfettered control of the executive branch, and that, in seeking enforcement of the subpoena, the Special Prosecutor was acting as the attorney for the grand jury and not merely as a subordinate member of the executive branch.

The issues were argued on August 22, 1973, before Chief Judge Sirica. The arguments were essentially those set forth in the briefs, with one notable exception. In his rebuttal argument, Wright stated that the President had told him that one of the subpoenaed tapes contained "national security material so highly sensitive" that the President could not even "hint" to Wright, who had a top secret clearance, the nature of the information.⁴

³ A special appearance permits a party to argue that the court lacks jurisdiction without submitting to the court's jurisdiction by the very fact of appearing.

⁴ When the recordings eventually were produced, no claim relating to national security was made, and it soon became apparent that the tapes did not include any classified information.

On August 29, 1973, Chief Judge Sirica ruled that the courts, and not the President, must make the ultimate determination of the validity and scope of any privilege asserted to bar them from obtaining evidence relevant to their proceedings and that they have the power to order a President to comply with a grand jury subpoena calling for unprivileged evidence in his possession. Although the judge emphasized the need of the grand jury, he seemed to suggest that the privilege would yield only with respect to those conversations that did not occur pursuant to the President's exercise of his duty "to take care that the laws be faithfully executed," that is, those conversations that on their face revealed a criminal conspiracy. Clearly, mere relevance to Watergate was not the test. The judge ordered the President to produce the subpoenaed materials for court inspection, but stayed his order for five days to permit the President to seek appellate review.

Without awaiting the formal filing of papers, the Court of Appeals informally indicated to the parties that if review were sought the Court would hear oral arguments on September 11, using the briefs in the district court and any supplemental briefs the parties wished to file on September 10. Although objecting to the expeditious schedule, the President, after both noting an appeal and filing a petition for a writ of mandamus, filed a new brief in the Court of Appeals developing at greater length the issues that he had raised in the district court. The Special Prosecutor also petitioned the Court of Appeals for review, arguing that inspection by Chief Judge Sirica was unnecessary because no valid claim of executive privilege could exist for any conversations actually relevant to the grand jury's proceedings. Alternatively, the Special Prosecutor asked the Court of Appeals to specify the particular standards that should govern the judge's inspection and argued that informed determinations of relevance could be made only with the Special Prosecutor's participation in the review.

On September 13, two days after oral argument, the Court of Appeals directed the parties to explore the possibility of reaching an agreement on voluntary submission of certain portions of the subpoenaed recordings to the grand jury. As the Court of Appeals stated:

[I]f the President and the Special Prosecutor agree as to the material needed for the grand jury's functioning, the national interest will be served. At the same time, neither the President nor the Special Prosecutor would in any way have surrendered or subverted the principles for which they have contended.

After initial discussions, the Special Prosecutor submitted to the President's counsel a proposal that called for preparation of copies of the tapes with omissions of any portions not related to matters

within the Special Prosecutor's jurisdiction; verification by a mutually acceptable person of the fact that the guidelines for omission had been accurately applied; and finality of the reviewer's determination. Before submission to the grand jury, the Special Prosecutor and counsel for the President would review the copies in an endeavor to agree upon the excision of any portion that was not material to the grand jury's investigation. Most important from the Special Prosecutor's viewpoint, the proposal included procedures for reviewing tapes that the Special Prosecutor might request in the future, either for the Watergate cover-up investigation or other grand jury investigations. A favorable court ruling at that time would have governed future requests, and if the Special Prosecutor were to forego final court resolution—after nearly two months of litigation—it was essential not to have to start from the beginning again if there should be another impasse over access. The proposal was unacceptable to the White House, however, and on September 20 both parties advised the Court that their discussions had been unsuccessful.

On October 12, the Court of Appeals, *en banc*, issued its decision rejecting the President's claims. The Court first decided that a President is not immune from judicial orders requiring the production of evidence for judicial proceedings. According to the Court, "sovereignty remains at all times with the people, and they do not forfeit through elections the right to have the law construed against and applied to every citizen." Citing the long-standing principle that the grand jury has a right to every person's evidence, the Court then held that executive privilege is not absolute, but must be balanced against other values. In this case, the Court ruled, the compelling need demonstrated by the grand jury outweighed the need of the executive branch to maintain the confidentiality of the particular conversations. In this regard the Court considered it important that public testimony concerning the conversations had substantially diminished any interest in maintaining further confidentiality. Finally, the Court emphasized that the standard for court screening of the tapes was only to be one of relevance to the grand jury's proceedings, and not whether the President, in participating in the conversation, was engaging in his constitutional duties. The Court stayed its order for five days to permit the President to seek review in the Supreme Court.

The Stennis Compromise and the Dismissal of Cox

On the Friday afternoon of the Court of Appeals decision, but before it had been announced, Cox met with Attorney General Richardson about an unrelated matter. During the meeting, Richardson philosophized about the need for a public official to know when to take a stand on a matter of principle. The following Monday, during

another meeting hastily called by the Attorney General, Richardson stated that "serious consequences" might ensue if Cox were not to agree to a compromise on the tapes by the close of business Friday, October 19, the date on which the President was due to file his petition for review by the Supreme Court. Although Cox expressed great reservations about negotiating under a deadline, and argued that there was no need to complete the negotiations so rapidly, he agreed to explore the possibility of a compromise.

After another meeting with Richardson on Tuesday the 16th, when Cox suggested that it would be best if Richardson were to put his proposal in writing, Richardson the next day delivered to Cox a document entitled "A Proposal." The stated objective was to provide "a means of furnishing to the court and the grand jury a complete and accurate record of the content of the tapes subpoenaed by the Special Prosecutor insofar as the conversations recorded in those tapes in any way relate to the Watergate break-in and the cover-up of the break in." The proposal provided that the President would select an individual to verify transcripts previously prepared by the White House—transcripts that would be verbatim, but would omit continuous portions unrelated to Watergate and would be in the "third person." The verifier would be permitted to paraphrase language "whose use in its original form would in his judgment be embarrassing to the President" and, in the interests of national security, to omit sections related to the national defense or foreign relations. Finally, the proposal would require the Special Prosecutor to join with counsel for the President in urging the Court to accept the verified transcripts as full and accurate records of all pertinent portions of the tapes "for all purposes for which access to those tapes might thereafter be sought by or on behalf of any person having standing to obtain such access."

Cox responded to Richardson on Thursday the 18th in a document entitled "Comments on 'A Proposal.'" He stated his willingness to accept the "essential idea of establishing impartial, but non-judicial means for providing the Special Prosecutor and grand jury with an accurate record of the contents of the tapes without [the Special Prosecutor's] participation," but listing eleven specific comments that struck him as "highly important," including the following:

(1) The public cannot be fairly asked to confide so difficult and responsible a task to any *one* man operating in secrecy, consulting only with the White House. Nor should we be put in the position of accepting any choice made unilaterally.

(2) The stated objective of the proposal is too narrow. It should include providing evidence that in any way relates to other possible criminal activity under the jurisdiction of this office.

(3) I do not understand the implications of saying that the "verbatim transcript . . . would be in the third person." I do

assume that the names of all speakers, of all persons addressed by name or tone, and of all persons mentioned would be included.

(4) A "transcript" prepared in the manner projected might be enough for investigation by the Special Prosecutor and the grand jury. If we accept such a "transcript" we would try to get it accepted by the courts (as you suggest). There must also be assurance, however, that if the indictments are returned, if evidence concerning any of the nine conversations would, in our judgement, be important at the trial, and if the court will not accept our "transcript" then the evidence will be furnished to the prosecution in whatever form the trial court rules is necessary for admissibility (including as much of the original tape as the court requires). Similarly, if the court rules that a tape or any portion must be furnished to a defendant or the case will be dismissed, then the tape must be supplied.

(5) The narrow scope of the proposal is a grave defect, because it would not serve the function of court decision in establishing the Special Prosecutor's entitlement to other evidence. We have long pending requests for many specific documents. The proposal also leaves half a lawsuit hanging (i.e., the subpoenaed papers). Some method of resolving these problems is required.

(6) The Watergate Special Prosecution Force was established because of a widely felt need to create an independent office that would objectively and forthrightly pursue the *prima facie* showing of criminality by high Government officials. You appointed me, and I have pledged that I would not be turned aside. Any solution I can accept must be such as to command conviction that I am adhering to that pledge.

Later that night, Wright telephoned Cox to inform him that certain of his comments were unacceptable. Cox realized that a confrontation was inevitable and believed that all communications should be in writing so that there would be a record of each side's position. He asked Wright to address a letter stating the President's response to the comments that Cox had delivered to Richardson. Cox promised a prompt reply.

Early on Friday morning, October 19, Wright's letter was delivered. Briefly, it stated that the "very reasonable proposal that the Attorney General put to you, at the instance of the President," was intended to provide information necessary to the grand jury and to "put to rest any possible thought that the President might himself have been involved in the Watergate break-in or cover-up." Wright stated the President's belief that the proposal would serve the national interest, but that four of Mr. Cox's comments "depart so far from that proposal and the purpose for which it was made that we could not accede to them in any form." The four unacceptable comments included the objection to one person reviewing the tapes and to that person being selected solely by the White House; the suggestion that the reviewers be appointed "special masters" and thus accountable to the court rather than the parties; the demand that the tapes

be made available if a court required; and the demand that the proposal also be applied to pending and future requests. Finally, Wright said:

If you think that there is any purpose in our talking further, my associates and I stand ready to do so. If not, we will have to follow the course of action that we think in the best interest of the country.

Cox replied as requested by 10:00 that morning, setting forth his understanding of the conversation the preceding evening—that is, that Wright had stated that there was no point in continuing conversations in an effort to reach a “reasonable out of court accommodation” unless Cox accepted categorically the President’s position with respect to certain key provisions. In addition to stating that the President already had selected the only person he would consider acceptable to review the tapes, that there could not be a special master under a court order, and that no portion of the tapes themselves would be provided under any circumstances, Wright had indicated that Cox would have to agree not to subpoena any other White House tapes, papers, or documents, no matter how relevant to criminal wrongdoing by White House officials. In conclusion, Cox wrote:

I have a strong desire to avoid any form of confrontation, but I could not conscientiously agree to your stipulations without unfaithfulness to the pledges which I gave the Senate prior to my appointment. It is enough to point out that the fourth stipulation would require me to forego further legal challenge to claims of executive privilege. I categorically assured the Senate Judiciary Committee that I would challenge such claims so far as the law permitted. The Attorney General was confirmed on the strength of that assurance. I cannot break my promise now.

Wright responded that “further discussions between us seeking to resolve this matter by compromise would be futile, . . . we will be forced to take the actions that the President deems appropriate in the circumstances.” He added that he wished to clear up two points “in the interest of historical accuracy, in the unhappy event that our correspondence should see the light of day.” First, he said that the issue of eventual availability of the tapes was a matter open to negotiation, but that the President would not give any advance commitment; second, the Special Prosecutor would be barred only from subpoenaing “private Presidential papers and meetings,” not the great mass of White House documents with which the President was not personally involved.

That night, October 19, President Nixon issued a statement setting forth the so-called “Stennis compromise” and announcing his decision not to seek Supreme Court review of the Court of Appeals decision.

The "Stennis compromise," which accorded with the basic outlines of the Richardson proposal of Wednesday morning, provided that Senator John Stennis would review the tapes to verify the White House transcripts and that the President would make available to Judge Sirica, as well as to the Senate Select Committee, the Watergate-related portions of the authenticated transcripts.

At the same time, the President delivered a letter to Attorney General Richardson directing him to instruct Cox "to make no further attempts by judicial process to obtain tapes, notes, or memoranda of Presidential conversations." He added that he regretted "the necessity of intruding, to this very limited extent, on the independence that I promised you with regard to Watergate when I announced your appointment. This would not have been necessary if the Special Prosecutor had agreed to the very reasonable proposal you made to him this week." Richardson told Cox about the letter, but emphasized that he was not delivering the instructions that the President had directed him to give.

Cox hurriedly prepared a brief statement which he read to the press that evening. Accusing the President of "refusing to comply with the court decrees," Cox stated that he would challenge the Stennis compromise in court. He added that he could not "violate" his promise to the Senate and the country to invoke judicial process "to challenge exaggerated claims of executive privilege." In an hour-long press conference held at noon the following day, October 20, Cox elaborated on his belief that acceptance of the President's directions would defeat the fair administration of criminal justice by compromising the Special Prosecutor's independence and insulating the President from the courts.

The dismissal of Cox and related events are described in Chapter 1 and Appendix B of this report. Public reaction played a substantial part in the President's later decision to comply in full with the court order and to abandon the Stennis plan. When Wright appeared before Judge Sirica on Tuesday, October 23, he announced that because of "the events of the weekend," the President had decided to abide by the Court of Appeals ruling.

Production of the Subpoenaed Materials and the Tapes Hearings

In the week that followed the President's reversal, the parties agreed on procedures and a timetable for production of the subpoenaed tapes and related materials. Chief Judge Sirica announced on October 30 that White House counsel would submit the tapes with an accompanying analysis indicating the portions of the recordings that did not relate to Watergate and thus were still privileged. Judge Sirica then

would review each recording, and give the grand jury all portions relevant to its investigation.⁵

On October 31, however, Buzhardt reported to the Court that recordings of the telephone call from Mitchell to President Nixon on June 20, 1972, and the meeting between President Nixon and Dean on April 15, 1973, did not exist. As Buzhardt later explained, the June 20 telephone call, received by the President in the residence area of the White House, had not been recorded, and the Dean meeting was not recorded because the tape had run out earlier on the busy Sunday of April 15.

After conferring with the parties, Chief Judge Sirica decided to hold hearings to explore how the taping system had been installed and maintained, how the tapes were stored, who had access to them, and why the June 20 call and April 15 meeting had not been recorded. These hearings, primarily with the testimony of Secret Service agents and White House aides who had been responsible for the system, lasted approximately two weeks and then were recessed.

On November 21, Buzhardt disclosed that 18½ minutes of the recording of the June 20, 1972, meeting between President Nixon and Haldeman had been obliterated.⁶ Only a buzzing sound could be heard. Haldeman's notes of the meeting confirmed that the erased portion concerned Watergate. Chief Judge Sirica reconvened the tapes hearings, with testimony from Woods (who admitted accidentally erasing a short segment of the 18½ minutes), White House chief of staff Gen. Alexander Haig, Buzhardt, and White House aide Stephen Bull. The Court, with the consent of the parties, also appointed a six-member panel of experts to test and analyze the tapes. Upon conclusion of hearings and receipt of the experts' report, Chief Judge Sirica referred the record of the proceedings to the grand jury for its consideration. (This investigation is described in Chapter 3 of this report.)

Renewed Requests for Tapes and Documents

One of the principal issues during the period between Cox's dismissal and the appointment of Special Prosecutor Jaworski was

⁵ The only recording that White House counsel asserted was totally unrelated to Watergate was the recording of the June 30, 1972, meeting between President Nixon and Mitchell. After reviewing the recording and consulting with the Special Prosecutor, the judge determined that two brief passages should be submitted to the grand jury.

White House counsel also asserted privilege with respect to the final portion of the September 15, 1972, meeting among President Nixon, Dean and Haldeman. The judge upheld the claim, but upon motion of the Special Prosecutor later released the portion to a different grand jury in connection with the investigation into alleged White House misuse of the Internal Revenue Service.

⁶ Subsequently, White House counsel revealed the existence of much shorter gaps in the President's taped recollections of his June 20 telephone call with Mitchell and his March 21, 1973 meeting with Haldeman and Dean.

whether the officials of the Department, including Acting Attorney General Bork and Assistant Attorney General Petersen, who had taken charge of the Special Prosecutor's investigations, would stand behind the staff in seeking evidentiary material in the control of the President. Although Cox had refrained from making many requests pending the outcome of the tapes litigation, three of WSPF's recent letters requesting documents had not been answered. On August 23, Cox had written to Buzhardt requesting a series of records relating to the office's investigation of the "Plumbers" break-in at the office of Dr. Lewis Fielding, Daniel Ellsberg's former psychiatrist. Four days later he had requested records relating to the investigation of the wiretap of journalist Joseph Kraft, and on October 10 he had requested documents relating to the May 3, 1972, assault on anti-war demonstrators on the Capitol steps. The office had not received a definitive response to any of these requests, nor to other requests that had been made long before the subpoena for the Presidential tapes had been served.

Petersen agreed to renew each of the requests after reviewing WSPF's ongoing investigations with individual task force leaders and determining that there was "a clear and immediate need for the production of the documents and other records." On November 1, he addressed a letter to Buzhardt asking for quick production of the logs of meetings between ten individuals and the President, a request that had been outstanding since June, and reiterating the requests of August and October relating to the Fielding break-in, the Kraft wiretap, and the May 3 assault. The next day he requested all records relating to the 1970 "Townhouse" operation—a funding operation for congressional candidates—in connection with an investigation into possible violations of the Federal Corrupt Practices Act.

On November 5, Leon Jaworski was sworn in as the second Special Prosecutor with assurances of full cooperation from the White House. On November 7, after an initial round of briefings on the status of all investigations, Jaworski made his first request for materials: copies of recordings of conversations between the President and Ehrlichman, Mitchell and Kleindienst on April 19 and 20, 1971, relating to the International Telephone and Telegraph Corporation ("ITT"). On the following day, he renewed the earlier requests for materials in the "Plumbers" files, and on November 15, he requested copies of recordings of conversations between the President and his former assistant Charles Colson in early January 1973 for use in the Watergate investigation. In each of his letters, Jaworski asked for an early response.

Jaworski had met with Buzhardt and General Alexander Haig, the President's Chief of Staff, on November 13 in part to discuss his recent requests for tape recordings and to stress the grand juries' need for prompt responses. They assured Jaworski that cooperation would

be forthcoming. Then, on November 19, Jaworski wrote to Buzhardt asking him to respond to the outstanding requests made before the dismissal of Cox and the more recent requests made by Petersen. He stated that failure to respond was "delaying and in some instances impeding our investigations." Jaworski made it clear that he would not tolerate any delays like those experienced by Cox:

In light of past experience, I believe it entirely appropriate to ask you to acknowledge each of these requests and explain your current position. As to those materials you intend to produce, please let us know when you expect to produce them. If you must review certain materials, please let us know when you will review them and when we can expect a definitive response. Finally, if there are any materials you do not plan to produce in response to our requests, please identify them and inform us why you are not producing them.

On November 24, Jaworski received an omnibus response from Buzhardt on outstanding requests. He stated that although searches for requested recordings require "enormous expenditures of time," the recordings that could be located would be provided. He then responded specifically to each request for documents, enclosing the documents that could be found and stating which could not. In short, Buzhardt's letter constituted a seemingly favorable response to many WSPF requests, but as Jaworski indicated in his reply of November 30, it merely acknowledged the existence of other requests, particularly in the Watergate and "Plumbers" areas, without indicating whether they would be met. Jaworski also protested the intimation in Buzhardt's letter that the Special Prosecutor's office had been less than cooperative in understanding the attendant delays, and concluded "that if our several requests are treated in the light of the White House's announced readiness to extend full cooperation—and we have no reason to believe otherwise—unequivocal response to our remaining requests should be forthcoming in another week or ten days."

In the following week the office renewed the request for Townhouse documents, only a few of which had been provided; made an extensive request for records relating to the investigation of dairy industry contributions; and renewed the request in more detailed form, for materials in the "Plumbers" files. On December 6, Jaworski also wrote to Haig, complaining that over three weeks had elapsed since their meeting on November 13 when Haig and Buzhardt had promised cooperation. Although certain documents had been provided on November 24, no tapes had been produced. Stressing the immediate need for delivery of the requested tapes and other materials, including the "Plumbers" files and files relating to contributions by the dairy industry, Jaworski warned that a subpoena would be issued early the next week if necessary.

The next day, Jaworski met with Haig and Buzhardt, and on December 8, the White House produced eight of the requested recordings. These related to the ITT investigation, the dairy industry investigation, the "Plumbers," and the Watergate investigation. The White House claimed that other requested conversations had not been recorded, either because they had taken place outside of the White House or because the telephone conversations were on lines that were not subject to the recording system. Finally, Haig and Buzhardt maintained that still other conversations were irrelevant to the investigations; it was agreed, however, that Jaworski would be allowed to review them, and one which Jaworski determined to be relevant was later produced. The White House also agreed to allow a member of the staff to review the files of the "Plumbers" unit.

During his appearance at the Senate Judiciary Committee's confirmation hearings on the nomination of William Saxbe to be Attorney General, Jaworski had assured the Committee that he would report at an appropriate time on the status of the office's efforts to obtain evidence from the White House. On December 13, in a letter to Committee Chairman James Eastland, Jaworski reported "significant cooperation from the White House" and stated that he hoped for a "mutually satisfactory resolution" of pending requests.

Access After the Commencement of the Impeachment Inquiry

In January of 1974, James D. St. Clair was appointed as the President's chief counsel for "Watergate"-related matters. By that time, the impeachment inquiry by the House Judiciary Committee had begun in earnest. It was clear from the outset that the arrival of St. Clair would occasion further delays in obtaining information from the White House. St. Clair needed time to acquaint himself not only with "Watergate" in general and the President's potential liability in any area of the Special Prosecutor's requests, but also with prior relationships and understandings between WSPF and the White House. The Special Prosecutor believed it essential to renew the requests that were outstanding and to emphasize to St. Clair that inordinate delays would be intolerable. Accordingly, on January 8, Deputy Special Prosecutor Henry Ruth addressed a letter to St. Clair asking for specified items relating to the office's investigation of the dairy industry.⁷ The next day, Jaworski requested recordings of 25 meetings or telephone conversations relating to the Watergate cover-up investigation, explaining that these tapes were necessary to permit as full an investigation as possible before any indictments were returned.

On January 22, Jaworski met with St. Clair, who indicated that the President would not make a decision with respect to the January 9

⁷ Jaworski had recused himself from all matters regarding this investigation.

requests until the Special Prosecutor provided a justification for each of the requested recordings. That same day, although stating that he did not believe that a showing of "particularized need" was required for each conversation, Jaworski sent St. Clair an explanation of the importance of each conversation to the Watergate investigation.

At the same meeting, Jaworski and St. Clair also discussed the possibility of obtaining the President's testimony before the grand jury. St. Clair suggested that Jaworski consider propounding written interrogatories to the President, with the possibility of Jaworski conducting a personal interview after the President answered the interrogatories. Jaworski countered with the suggestion that the grand jury come to the White House, an alternative that St. Clair said would be unacceptable. The following day, Jaworski wrote St. Clair that written interrogatories generally are not a useful or effective method for obtaining a person's testimony. But, in order to consider fully the St. Clair proposal, Jaworski asked that St. Clair determine whether the President would answer under oath, how long it would take the President to provide answers, whether tapes and documents relevant to the answers would be provided, and who, in addition to the Special Prosecutor, would be permitted to interview the President after the interrogatories were answered. On January 25, St. Clair responded that he was prepared to recommend to the President that the answers to the interrogatories be given under oath, but that in light of the materials already provided to the Special Prosecutor, it would not be suitable to provide further tapes and documents. He also indicated that only Jaworski should conduct the interview.

As to the January 9 request for Watergate-related tapes, St. Clair claimed that under the Court of Appeals decision of October 12, 1973, in *Nixon v. Sirica*, WSPF had to show a "uniquely powerful" need for the tapes and that they constituted "evidence for which no effective substitute is available." The tapes requested, he contended, were merely cumulative of the testimony of witnesses before the Senate Select Committee and thus could serve only as corroboration for the grand jury. Although he concluded that the January 22 justifications for Watergate tapes did not meet these requirements, he stated that no final decision had been made as to whether the material called for would be produced voluntarily and promised a definitive response early the next week.

During the first month after St. Clair arrived, the only items produced were those that had been promised during 1973. Each time items were delivered to the Special Prosecutor they were accompanied by a letter stating that the materials were being furnished "solely for your use in presenting evidence to the grand jury." It became clear over the next weeks that St. Clair was primarily concerned that evidence produced for the grand jury not subsequently be provided by WSPF to the House Judiciary Committee for use in its impeachment

inquiry. Believing it necessary to clarify the status of the materials received, Jaworski wrote to St. Clair on January 25, stating that the office would lay before the grand jury any relevant evidence bearing on matters within the Special Prosecutor's jurisdiction, but that it was necessarily implicit that, if the grand jury were to return indictments, any evidence provided to the office, whether under subpoena or voluntarily, could be used at any trials resulting from grand jury investigations.

On January 30 Jaworski again asked St. Clair by letter for a response to WSPF's numerous outstanding requests.⁸ That night, in his State of the Union Address, the President said that he had turned over all the evidence that the Special Prosecutor needed to complete his Watergate investigation. In a similar statement to the press outside the courthouse the next day, St. Clair hinted that no more evidence would be forthcoming. Hoping to clarify the situation, Jaworski wrote to St. Clair on February 1 asking whether it was then clear that the White House would not voluntarily produce any additional evidence. Three days later, St. Clair responded: it was the President's view that he had furnished sufficient evidence to determine whether there was probable cause for returning indictments and that further production would only delay the investigations. He voiced the hope that some alternative means of furnishing needed information could be agreed upon to avoid "prolonged litigation." At the same time, St. Clair indicated that he would have to review the requests for documents and that he would respond as soon as possible.

White House attention was then focused solely on the impeachment inquiry. Perhaps one of the most troubling points for the Special Prosecutor was the Administration's concerted attack on John Dean, an important witness in the Watergate investigation. In response to this attack, wherein Senate Minority Leader Hugh Scott and others had issued statements demeaning Dean's credibility, on February 3 Jaworski publicly stated his belief in Dean's veracity. Three days earlier WSPF had found it necessary to vouch for Dean's credibility in a court proceeding. On February 4, the day that St. Clair indicated that no more tapes would be made available to the Special Prosecutor (tapes obviously critical to determining whether or not John Dean

⁸ These included: the January 9 request for tapes related to Watergate, the November 2 and December 3 requests for documents relating to the "Townhouse" operation, the December 3 request for records relating to the appointments of ambassadors, the August 27 request for records relating to the wiretap of Joseph Kraft, the December 18 request for Fred Fielding's records relating to IRS, the December 4 request for documents relating to ITT, the January 8 request for documents relating to the dairy industry, and the October 10 request for documents relating to the May 3, 1972 assault on demonstrators.

was telling the full truth), the White House press office released the following statement in St. Clair's name:

I have noted that the Special Prosecutor and members of his staff have seen fit to discuss in public their views regarding John Dean's veracity. I can say categorically, however, that the tapes and other evidence furnished to the Special Prosecutor—at least as far as the President is concerned—do not support sworn statements before the Senate Select Committee made by Mr. Dean as to what the President knew about Watergate, and especially when he knew it. The evidence does support what the President has said on this matter.

I do not intend, nor would it be appropriate for me, to discuss the technical, legal issues of perjury. I suggest the time and place for discussing such matters is in court, or perhaps before the House Judiciary Committee, not in the public media. For this reason, I do not believe it would be appropriate to further discuss this matter at this time.

On February 8, Jaworski met with St. Clair to discuss the President's refusal to provide additional tapes. If the President supplied the tapes already requested for the Watergate grand jury investigation, St. Clair asked, would the Special Prosecutor agree not to request any further tapes in connection with that investigation? Jaworski responded in writing that he would be willing to forego future requests for the grand jury investigation, if it was understood that "this agreement would not foreclose further requests that may be occasioned by legitimate defense demands or our trial preparation needs after indictment."

On February 13, St. Clair responded that the President had refused to reconsider his earlier decision to end his cooperation, at least with regard to producing any tape recordings of Presidential conversations. It was clear to Jaworski that any voluntary cooperation was at an end, and, in accordance with his obligation to report to the Senate Judiciary Committee on the status of requests to the White House for evidence, he wrote to Senator Eastland to outline the correspondence of the first week of February and summarize the materials provided and refused by the White House from the beginning of the Special Prosecutor's office to date. Jaworski added:

Although it is true that the grand jury will be able to return indictments without the benefit of this material, the material is important to a complete and thorough investigation and may contain evidence necessary for any future trials.

At the same time, the Special Prosecutor decided that prolonged litigation to obtain more tapes for the grand jury would unduly delay the Watergate indictment. Accordingly, at his recommendation,

the grand jury returned an indictment on March 1 in *United States v. Mitchell*, the Watergate cover-up case.⁹

Other grand jury investigations were also pending, and President Nixon also refused to turn over any documents or tapes for them. On February 27, St. Clair wrote that because the President believed that the grand juries had sufficient evidence, he would not consent to provide any materials relating to "Townhouse," appointment of ambassadors, White House contacts with IRS, ITT, or the May 3 incident. As to "Townhouse," St. Clair also challenged the Special Prosecutor's jurisdiction because the investigations involved the 1970 congressional elections. Jaworski responded immediately that he could not "imagine" how the White House knows whether the grand jury had been "furnished 'sufficient evidence' to render fair and thorough consideration to the question of returning indictments." He also challenged the assertion that he had no jurisdiction over the "Townhouse" matter. On March 2, St. Clair "withdrew" his letter.

Although "Townhouse" documents were produced on March 14, it appeared that there would not be any significant voluntary co-operation in other areas. Accordingly, on that day Jaworski issued a subpoena on behalf of the grand jury for documents relating to the appointments and campaign contributions of four ambassadors. Shortly after the subpoena was served, St. Clair requested an adjournment of the return date, and on March 29 the President began voluntary compliance.

At about the same time, the President produced a short portion of the recording of a meeting for use in former White House aide Dwight Chapin's perjury trial, but significant voluntary cooperation with WSPF then ceased. The President refused to permit the office to review the files of his former assistants Ehrlichman and Colson in connection with the upcoming Fielding break-in trial.¹⁰ Furthermore, despite an assurance on April 4 that the office would receive a prompt response to a modified and narrower request for tapes and documents relating to the dairy industry investigation, no response was forthcoming. Indeed, it was not until late June that St. Clair informed WSPF that no tapes would be provided.

⁹ Prior to ending its investigation, the grand jury invited President Nixon to testify. The President refused, on the grounds that it would be inappropriate for a President in light of the constitutional separation of powers to subject himself to questioning before the grand jury.

¹⁰ Later, when the White House refused to permit Ehrlichman access to the materials and a dismissal of the indictment was threatened, the White House modified its position to accommodate the minimum requirements set by the trial judge.

The Watergate Trial Subpoena Duces Tecum

On March 12, Jaworski wrote to St. Clair requesting access to recordings believed important to preparation for the Watergate cover-up trial. Jaworski requested a response no later than March 19 so that any litigation necessary could be initiated promptly in order to avoid any delay in the scheduled trial date of September 9. On March 22, St. Clair responded that the request was under "active consideration." He added that the White House had received a similar request from the House Committee on the Judiciary, "the resolution of which will obviously bear on your request." During several meetings and telephone conversations with St. Clair over the following days, it became clear that WSPF would receive only those materials that were to be made available to the House Committee.¹¹ According to St. Clair, the President would not consider other requests until he had decided what to provide to the Committee. Moreover, St. Clair would not specify what criteria would govern the President's response.

Thereafter, on April 11, Jaworski wrote to St. Clair to inform him that he would seek a trial subpoena on April 16. In response, St. Clair withdrew from earlier oral statements to Jaworski and wrote that the Office's requests were not tied in the White House's view to those of the House Committee "other than in the practical sense that it is more expeditious to furnish the same material to you and to the House Committee at the same time." As to the criteria that would govern the President's response, he stated that the response would depend upon the evidence necessary to a successful prosecution. The President, he said, would have to balance this need against the public interest, having in mind the Court of Appeals' statement in *Nixon v. Sirica* that wholesale public access to executive deliberations would cripple the executive branch. St. Clair also noted that because the grand jury had returned an indictment, he presumed there already was sufficient evidence to convict each of the defendants. Finally, he added that he was "somewhat at a loss to understand how you are in a position to assert that you need the materials requested since you do not know what is contained in the recordings in question."

On April 16, the Special Prosecutor filed a motion before Judge Sirica requesting that he issue a trial subpoena to the President for recordings of 64 specified conversations, stating that production was sought before trial in order to permit review and transcription of the recordings without necessitating a delay in the trial. The 64 recordings had been chosen by reviewing all the evidence then available to the Special Prosecutor including those conversations which could be

¹¹ At the hearing before Judge Sirica on whether the Watergate grand jury report on President Nixon would be transmitted to the House Judiciary Committee, St. Clair had informed the Court that the President would make available to the House all materials that had been provided to the Special Prosecutor.

specifically identified and which, because of either circumstantial evidence or available testimony,¹² the office had reason to believe would be relevant to proving the cover-up conspiracy. In addition, because the prosecutors knew they must counter the argument that the need for the recordings did not outweigh the interest in confidentiality of executive deliberations, they chose only those conversations that were "demonstrably important" to defining the extent of the conspiracy in terms of time, membership and objectives.

Judge Sirica issued the subpoena on April 18. On May 2, the return date, the President filed a special appearance and a motion to quash the subpoena. Although the President claimed no privilege with respect to the Watergate-related portions of the conversations for which he had provided transcripts to the House Judiciary Committee on April 30, he claimed executive privilege with respect to the remaining materials.¹³ In his supporting memorandum, the President argued first that the Special Prosecutor had not made a sufficient showing that the items were relevant. Indeed, he argued that because the Special Prosecutor could not show exactly what was in the recordings, he could not establish their relevance to the trial. Next, the President contended that the Special Prosecutor's showing of need was insufficient. The President claimed that the need for evidence by a grand jury is much greater than that of a prosecutor in a post-indictment setting. Because the Special Prosecutor had sufficient evidence to make a *prima facie* showing of guilt against the persons indicted, the President argued, the items sought by the subpoena at best could be classified as "merely cumulative or corroborative—certainly not vital or particularly necessary." The President did indicate, however, that if any defendant could show that particular items were exculpatory as to him, the President would consider producing them.

WSPF knew that its legal position would be strongest if the Special Prosecutor disclosed to the Court that the grand jury had voted to authorize the Special Prosecutor to name President Nixon as an unindicted co-conspirator in the Watergate trial. The grand jury's finding was important because it formed a factual predicate for the legal argument that executive privilege did not apply to any conversations that occurred in the course of and in furtherance of a criminal conspiracy. The office believed that the public purpose underlying executive privilege—to promote bona fide governmental deliberations—could not support the shielding of alleged criminality. Disclosure of

¹² In some cases, there was testimony either before the grand jury or in other forums indicating that the conversation in question related to Watergate. In other cases, the Special Prosecutor judged from events either before or after the conversation in question that the conversation probably concerned Watergate.

¹³ On April 30, the President submitted to the House Judiciary Committee transcripts of 43 Watergate-related conversations.

the grand jury's finding was obviously a sensitive and grave matter, and Jaworski believed that he should advise St. Clair and Haig that such a disclosure would be made in the event of further proceedings to enforce the subpoena. On Sunday, May 5, Jaworski informed them of the grand jury's finding and stated that unless there were voluntary compliance with the subpoena, at least with respect to 16 conversations regarded as essential to the prosecution, he would make the necessary use of the grand jury's finding to present the best legal arguments against the President's motion to quash. Haig and St. Clair asked for additional time to consider the matter before the Special Prosecutor filed his response to the motion.

After listening to the conversations that Jaworski had identified as crucial, including meetings with Haldeman on June 23, 1972, the President decided not to comply in any respect with the subpoena. Accordingly, on May 6, the Special Prosecutor filed his response with the District Court. At the suggestion of the Special Prosecutor, the response, which included a statement of the grand jury's finding, was filed under seal, since Jaworski believed that in light of the pending impeachment inquiry, it would be extremely unfair to have the grand jury's finding made public at that time, unless that was necessary to the litigation. In addition to his legal memorandum, the Special Prosecutor filed a 49-page appendix detailing the relevance of each subpoenaed conversation. He argued that the available testimony about the conversations, as well as the circumstances surrounding each conversation, clearly supported a finding that each would be relevant to the trial and that the Court should not require a greater showing of relevance where the prosecutor in fact did not have access to the actual evidence. He then argued that no executive privilege was available because each of the participants in the conversation was a co-conspirator and each conversation occurred in the course of the conspiracy. Alternatively, he claimed that the need for the evidence, which related to aspects of the conspiracy for which no other reliable evidence was available, outweighed any interest in secrecy. The Special Prosecutor urged that the need for the evidence was even greater now than in the grand jury because the Government has at trial the burden of showing guilt beyond a reasonable doubt.

Finally, in addition to arguing that the numerous disclosures by the President about Watergate, including the transcripts provided to the House Judiciary Committee on April 30, waived any claim of executive privilege, the Special Prosecutor argued that it was essential to obtain the actual tapes of the conversations. Transcripts of the conversations would not suffice. To support this point he compared some of the transcripts submitted by the White House with those prepared by the WSPF for the grand jury. That comparison indicated material differences between the two sets of transcripts. Important

portions had been deleted or marked as unintelligible in the White House transcripts.

In reply, the President filed a motion to expunge the grand jury's finding. He argued that the grand jury had no jurisdiction over the President—that the President could be subject only to impeachment for alleged wrongdoing and not to the criminal jurisdiction of the courts. The President for the first time also raised the argument that the court did not have jurisdiction over the dispute because it was "entirely intra-executive in nature."

The Special Prosecutor in turn filed a memorandum urging that while it was not necessary for the court to decide the difficult issue whether the grand jury could have indicted President Nixon, there was no question that the grand jury could find that the President was an unindicted co-conspirator. Noting that the Constitution did not confer any immunity on the President, the Special Prosecutor argued that, because the mere naming of the President as a co-conspirator does not have any practical consequences on the President's ability to perform his constitutional duties, the grand jury's finding did not violate the separation of powers doctrine. As to the issue of jurisdiction, he argued that there was in fact a case or controversy because, under the WSPF regulations that were binding upon the Department of Justice and the President, the Special Prosecutor had exclusive jurisdiction for conducting the prosecution of the Watergate case and was not subject to the direction of the President or Attorney General. Thus, the Special Prosecutor was not for these purposes a "subordinate" of the President. Jaworski emphasized that when he had been selected as Special Prosecutor, he had received repeated assurances from Bork, Saxbe, and Haig that his independence would not be interfered with. Finally, the Special Prosecutor urged the court to make all the proceedings public in view of the attack on his authority to seek and enforce the subpoena for Presidential conversations.

Judge Sirica issued his opinion and order enforcing the subpoena on May 20. At the outset, he held that as long as the regulations establishing the independence of the Special Prosecutor were in effect, the President's "attempt to abridge the Special Prosecutor's independence with the argument that he cannot seek evidence from the President by court process is a nullity and does not defeat the court's jurisdiction." Accepting WSPF's showing of relevance and admissibility, the court held that the demonstration of need was "sufficiently compelling to warrant judicial examination in chambers incident to weighing claims of privilege where the privilege has not been relinquished." Finally, as to the President's motion to expunge the grand jury's finding, Judge Sirica stated that he saw no need "to grant more extensive protective orders at this time or to expunge portions of the record. Matters sought to be expunged are relevant, for example, to a determination that the presumption of privilege is overcome."

Judge Sirica ordered the President to submit the recordings to the court on or before May 31 but stayed his order until May 24 to permit the President to seek appellate review.

On May 24, the President sought review in the Court of Appeals. That same day, however, the Special Prosecutor filed a petition in the Supreme Court for direct review of Judge Sirica's order. Under Supreme Court rules, this procedure, which allows the Supreme Court to review a case before it is decided by the Court of Appeals, is reserved for cases of imperative public importance. As the Special Prosecutor represented in the petition, expedited consideration by the Supreme Court was important to permit the Watergate trial to proceed as quickly as possible. He estimated that if the Supreme Court were to wait until its October 1974 Term, there would be a delay of at least six months in the start of the trial. Moreover, he submitted that there was little need for a Court of Appeals decision, since that Court had considered the same constitutional issues in deciding the validity of the grand jury subpoena in *Nixon v. Sirica* the preceding October. The Special Prosecutor's petition presented five issues for review by the Court:

1. Whether the President is subject to a judicial order directing compliance with the subpoena *duces tecum* issued on the application of the Special Prosecutor in the name of the United States.

2. Whether a federal court is bound by the assertion by the President of an absolute "executive privilege" to withhold demonstrably material evidence from the trial of charges of obstruction of justice by his own White House aides and party leaders upon the grounds that he deems production to be against the public interest.

3. Whether a claim of executive privilege based on the generalized interest in the confidentiality of government deliberations can block the prosecution's access to evidence material to the trial of charges of criminal misconduct by high government officials who participated in those deliberations, particularly where there is a *prima facie* showing that the deliberations occurred in the course of the criminal conspiracy charged in the indictment.

4. Whether any executive privilege that otherwise might have been applicable to discussions in the offices of the President concerning Watergate had been waived.

5. Whether the Special Prosecutor had made an adequate showing as to the relevance and admissibility of the subpoenaed items.

The President opposed the petition of the Special Prosecutor solely on the ground that it was important for the Supreme Court to consider the case only after careful reflection and deliberation and with the aid of decisions by the lower courts. The President also stated that "it is at least questionable whether it is in the best interests of all parties involved to rush to judgment in this case in the midst of an impeachment inquiry involving intrinsically related matters."

On May 31 the Supreme Court granted the Special Prosecutor's petition and directed the parties to file their briefs simultaneously on June 21. Reply briefs would be filed on July 1, and oral argument was set for July 8.

After the Supreme Court granted the Special Prosecutor's petition, the President filed a cross-petition raising the sole question whether the grand jury has the authority to charge an incumbent President as an unindicted co-conspirator in a criminal proceeding.¹⁴ The Supreme Court granted the cross-petition on June 15, setting the same briefing and argument schedule as for the petition of the Special Prosecutor.

The brief for the Special Prosecutor basically presented the same arguments previously outlined in the District Court and in the previous October's Court of Appeals case. The only new areas involved the questions whether the Court had jurisdiction over the dispute between the President and the Special Prosecutor and whether the grand jury had the power to name the President as an unindicted co-conspirator. The Special Prosecutor initially was undecided about addressing the question of jurisdiction in his brief because it had not been presented by the petition of either party. Since the issue of the Court's jurisdiction, however, can be raised at any time in any judicial proceeding, he determined to brief the issue fully at the outset, instead of waiting to reply to any argument by the President that the Court lacked jurisdiction.¹⁵ As for the second issue—whether the President was subject to being named an unindicted co-conspirator—it was decided as a matter of strategy to treat the question only briefly in a long footnote to the argument that there can be no privilege when there is a showing that the subpoenaed conversations occurred in the course of a criminal conspiracy. The full development of the argument that the President is subject to being named a co-conspirator was left to the reply brief.

The President's brief, in addition to presenting the arguments made in the District Court, claimed that the President's absolute prerogative to withhold the tapes from the courts rested in the constitutional right of privacy and freedom of expression, as well as the separation of powers. The President also argued that the Court could not ignore the pending impeachment inquiry and that enforcement of the subpoena would thrust the courts—unconstitutionally—into that controversy.

¹⁴ On June 15 the Court, on the joint motion of the Special Prosecutor and counsel for the President, unsealed the grand jury's finding.

¹⁵ This decision was influenced by the exchange of correspondence among Jaworski, St. Clair and Saxbe in which Jaworski charged that the President's challenge to Jaworski's jurisdiction violated the assurances of independence that he had received when he was appointed.

Following oral argument, the Supreme Court on July 24 affirmed Judge Sirica's order enforcing the trial subpoena.¹⁶ First, the Court held that it had jurisdiction in the dispute between the President and the Special Prosecutor because the regulations establishing WSPF were binding on the executive branch and guaranteed the Special Prosecutor's independence from control by the Attorney General and the President. According to the Court, the dispute, stemming from the claim of privilege in the face of a judicial demand for evidence relevant and admissible in a criminal case, was the type of dispute traditionally adjudicated by the courts. The Court then held that under the Constitution the courts ultimately must determine what the constitutional powers of each branch are and the courts have the ultimate power to decide whether a claim of privilege is well taken in a judicial proceeding. The Court then rejected the claim of an absolute executive privilege, holding that although the privilege is constitutionally based (the first time this had been decided firmly by the Supreme Court), it is subject to a balance.

We conclude that when the ground for asserting privilege as to subpoenaed material sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice. The generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial.

Finally, the Court held that Judge Sirica had acted within his discretion in finding that the Special Prosecutor's showing had satisfied the burden required for the issuance of a trial subpoena.

The Court did not reach the issue raised by the President in his cross-petition—whether a President is subject to being named as an unindicted co-conspirator by the grand jury. Because the Court found that the interest in confidentiality did not prevail over the need for evidence in a criminal prosecution, it was unnecessary for the Court to decide whether the privilege also was vitiated because the conversations occurred in the course of a criminal conspiracy. Accordingly, the Court dismissed the cross-petition as "improperly granted."

The day the Supreme Court's opinion was filed, the President announced that he would comply. The next day the Special Prosecutor filed a motion before Judge Sirica for an order implementing compliance with the judge's earlier order of May 20, enforcing the subpoena. Less than a week later, St. Clair produced the first set of

¹⁶ The decision was unanimous with one Justice having disqualified himself.

subpoenaed recordings for court review.¹⁷ Then, on August 5, before he was required to produce them in court, the President publicly disclosed the transcripts of his conversations of June 23, 1972. These transcripts showed his early involvement in the cover-up, and belied contrary claims he had repeatedly made to the public and to the Congress. His remaining support against impeachment in the House and conviction in the Senate quickly eroded. Four days later he resigned.

Post-Resignation Access to the Nixon Administration Materials

A few hours before the President announced his resignation, Haig conferred briefly with Jaworski to tell him of the imminent announcement and of plans to move the Nixon Administration materials to San Clemente. He assured Jaworski, however, that the materials would be kept intact and that there would be a lawyer to respond to any requests that WSPF might have. WSPF had numerous requests outstanding and there had not been full compliance with the trial subpoena.¹⁸

On August 13, representatives of the Special Prosecutor met with Buzhardt and St. Clair about the status of the Nixon materials. Buzhardt said that the Special Prosecutor would be notified before any steps were taken to move the materials to San Clemente, but later that day the office learned through the wire services that there were immediate plans to move the materials to San Clemente. The reports indicated that a van was being loaded with the former President's personal files. White House press statements also claimed that the Special Prosecutor had approved the transfer. WSPF immediately telephoned the White House to object to the removal and the statement. The statement was retracted, and Buzhardt gave an assurance that there would be no transfer without adequate advance notice to enable the Special Prosecutor to take legal action.

On August 15 four members of the Special Prosecutor's staff met with Buzhardt and Philip W. Buchen, who that day had been named counsel to President Ford. At the outset, the WSPF representatives

¹⁷ Under procedures first set forth in *Nixon v. Sirica* and incorporated in Judge Sirica's order of May 20, all subpoenaed recordings (with the exception of those conversations that had not been recorded) were produced for inspection by the judge. After reviewing the recordings, all relevant portions were released to WSPF for use in the cover-up trial. Under the Supreme Court's decision in *United States v. Nixon*, all portions of the subpoenaed recordings not actually relevant to the trial remained privileged.

¹⁸ Although all of the tapes called for by the subpoena had been produced, very few of the written notes and other materials pertaining to the subpoenaed conversations (materials that the subpoena required to be produced) were provided to the court.

delivered a schedule summarizing all requests then outstanding, as well as schedules delineating possible future requests for files that the Special Prosecutor believed contained evidence relevant to his continuing investigations. The staff members stated their preference not to enter into a detailed discussion of ownership of the materials, but observed that there were strong arguments that the working papers of one Administration, as long as they are relevant to pending business of the next Administration, must be made available to the next Administration. At the same time, they emphasized their interest in reaching an amicable arrangement with former President Nixon and the Ford Administration. Buzhardt expressly assured them that nothing would be moved as long as the Special Prosecutor objected. Buzhardt further stated that he would visit the former President the following week to impress upon him the urgency of securing a representative to enter into discussions with WSPF to explore possible means of providing WSPF with access to the materials it needed to complete its investigations. At the conclusion of the meeting, it was announced by joint agreement that the status of the materials in which the Special Prosecutor had a continuing interest would be maintained pending discussions.

Following the meeting, Buchen requested the Attorney General to prepare an opinion on the question of ownership of the Nixon materials. Upon receiving informal advice from the Department of Justice that the former President owned the materials, Buchen, on behalf of President Ford, without any notice to WSPF, entered into discussions with Herbert J. Miller, Jr., counsel to the former President, concerning a depository agreement regarding future custody of the Nixon tapes and documents.

On September 8, President Ford announced that he had granted a full and unconditional pardon to his predecessor for any offenses he might have committed during his tenure as President. At the same time, President Ford made public a September 7 agreement between Arthur F. Sampson, the Administrator of General Services, and former President Nixon whereby all "historical materials" of the Nixon Administration would be deposited in a secure federal facility in California. Under the terms of the agreement, once the materials were deposited, all requests or subpoenas for the materials would have to be directed to the former President who would have sole control over who could gain access to them. President Ford also announced the Attorney General's formal opinion that former President Nixon owned all the materials in question.

On September 12 members of the Special Prosecutor's staff met with Buchen and representatives of the Department of Justice. The WSPF representatives stated their belief that the Nixon-Sampson agreement violated the assurances given to the Special Prosecutor on August 15. The Special Prosecutor was willing, if necessary, to chal-

lenger the validity of the agreement. As a result, the Justice Department undertook discussions with Miller to determine whether a "modification" of the agreement could be reached to accommodate the interests of the Special Prosecutor.

Over the following days there were a series of meetings between Miller and the Department on the one hand and the Department and WSPF on the other.

The discussions included a proposal that the Special Prosecutor's requests for Nixon materials be submitted to an arbitration panel composed of a designee of the former President, a designee of the Special Prosecutor, and a third person to be chosen by the other two members of the panel. In making decisions, the arbitration panel would apply the same standards and principles that would be applicable in a court of competent jurisdiction. Negotiations over the details of a possible agreement also were carried on directly between Miller and representatives of the Special Prosecutor. They eventually broke down, however, over two principal issues—whether there would be any judicial review of the arbitration panel's decisions and whether the arbitration agreement would make any statement regarding the legislation then pending in the Congress to abrogate the Nixon-Sampson agreement. During these negotiations former President Nixon voluntarily provided materials that WSPF requested for the Watergate cover-up trial.

On October 17 former President Nixon brought suit in the United States District Court for the District of Columbia against Sampson, Buchen and H. Stuart Knight, the Director of the Secret Service (the custodian of many of the Nixon materials), to compel enforcement of the September 7 agreement or, in the alternative, to require delivery of all the tapes and documents to him in California. The Special Prosecutor intervened in this suit to protect and preserve his interests in the Presidential materials. A temporary restraining order by the court maintained the status quo and permitted access to the materials only with the joint consent of the former President and counsel for President Ford.

Thereafter, the Special Prosecutor issued grand jury subpoenas to Buchen for Nixon materials which the office believed to be relevant and important to its pending investigations. On November 9, following discussions among counsel for President Ford, the Department of Justice and the Special Prosecutor, the President determined that "the due administration of justice and the public interest require that the Special Prosecutor have prompt and effective use of those Presidential materials of the Nixon Administration now located in the White House complex that are relevant and important to ongoing criminal investigations and prosecutions within the Special Prosecutor's jurisdiction." The Special Prosecutor then entered into an agreement with Buchen, Sampson and Knight whereby WSPF would

gain access to the materials to conduct a limited search for the relevant documents and tapes. The subpoenas issued to Buchen were then withdrawn.

Because of the outstanding temporary restraining order, it was necessary for the Special Prosecutor and the Department of Justice to apply to the court for a modification of the terms of the order to permit implementation of the November 9 agreement. Former President Nixon, of course, opposed the modification. The Special Prosecutor argued to the court that even if the former President were the owner of the materials, the current Administration had a right to use them in conducting important ongoing governmental business and that the former President had no right to assert executive privilege to prevent access to such use. In seeking this modification the Special Prosecutor hoped that the Court would be convinced to separate a prosecutor's interests from that of others seeking access to the materials and to meet the need for an expeditious ruling on the request.

These hopes were not realized. The Court continued to defer action on this request until it determined the entire matter relating to all claimants. The motion to amend the temporary restraining order was not granted immediately and, it appeared that there might be extended litigation before the November 9 agreement could be carried out. Accordingly, the Special Prosecutor resumed negotiations with Miller in an effort to reach a mutually acceptable agreement to afford the Special Prosecutor use of the limited number of materials that were relevant to his investigations. These negotiations lasted for approximately six weeks and included numerous meetings. Each side drafted various proposals which were debated at length. Basically, under the agreement as finally proposed, however, the Special Prosecutor would make requests similar to those he would have made under the November 9 agreement. Miller, however, would review all requested recordings as well as his client's personal files, while WSPF would review the files of White House staff members. The Special Prosecutor would have the right of access to all materials pertinent to the investigations designated in his requests that were located during these reviews. In the end, however, this phase of the negotiations failed to produce agreement. It became apparent that Miller, either through insertion of specific language he wanted in the agreement or merely by its timing, could use such an agreement as leverage to attempt to prevent the then pending Presidential Recordings and Materials Preservation Act from becoming law. The Special Prosecutor determined that it would be inappropriate to allow his office to be placed in the posture of signing an agreement which could jeopardize the chances that the bill would become law.

The Act as signed into law on December 19 did not make it possible, however, for the Special Prosecutor to gain access to the materials he sought without extended litigation. Indeed, on December 20

former President Nixon filed an action challenging the constitutionality of the Act. WSPF and Miller then reopened negotiations, which resulted in an informal understanding that was implemented between late February and July, 1975. Under this agreement indices of portions of the Nixon materials identified by the Special Prosecutor were prepared by professional archivists. The Special Prosecutor, using these various indices, designated files to be searched for materials pertinent to investigations. He further described the investigations to allow the person examining the files to determine which documents were in fact pertinent to the specified investigations. With a limited number of exceptions—those files that contained highly personal or confidential communications of former President Nixon—the file searches were conducted by archivists assigned to White House counsel's office. All documents located in any file reviewed that were relevant to any of the specified investigations were supplied to WSPF. It was agreed, however, that notes of Haldeman and Ehrlichman meetings with the President would be turned over only if they pertained to the specific investigation designated for the file in which they were found. Furthermore, all requested recordings were reviewed by Miller or an associate, and if there were any conversations on the recordings with information pertinent to the Special Prosecutor's investigations, copies of those conversations were made available. WSPF was also permitted to listen to any recording if there was any question as to its pertinence. This procedure provided WSPF with much information needed for pending trials and for conclusion of several investigations.

The final dealings with former President Nixon involved WSPF's taking of his testimony under oath, in the presence of two grand jurors, in California on June 23 and 24, 1975. A stipulation filed with the court stated that the grand jury believed it was necessary to obtain the testimony of the former President concerning several areas of ongoing inquiry. Upon his representation that he was willing to submit to questioning, but unwilling to travel to Washington because of his doctor's advice, and in view of other legal considerations, the grand jury consented to a sworn examination in California. This procedure was approved by the court and the transcript was later presented to the full grand jury and made part of its minutes.

ACTIONS RELATED TO PRESIDENT NIXON'S POSSIBLE CRIMINAL LIABILITY

Background

Speculation about the President's possible involvement in Watergate-related offenses, stemming largely from press reports, pre-dated the appointment of the Special Prosecutor. Later, during televised hearings before the Senate Select Committee, Sen. Howard

Baker repeatedly expressed this concern by asking "What did the President know and when did he know it?" Responsibility for any criminal investigation of this question was given to the Special Prosecutor. His charter gave "full authority for investigating and prosecuting . . . allegations involving the President."

Direct evidence linking President Nixon to the Watergate cover-up came from former White House counsel John Dean, when he testified publicly before the Senate Select Committee in June 1973. Dean told the Committee that President Nixon had discussed executive clemency for Watergate burglar Howard Hunt with his former aide Charles Colson, and that the President had approved the payment of money to Hunt in return for his silence. Dean's account of two crucial meetings with Nixon and of the President's approval of raising further "hush money" was contradicted by former White House aide H. R. Haldeman, who testified before the Committee that the President had told Dean with respect to the money: "We could do that, but it would be wrong." In the Summer of 1973, at Cox's request, WSPF staff prepared the same kind of factual memorandum about any possible criminal involvement of the President as had been prepared with respect to other major actors. At this stage, the Watergate Task Force memorandum relied heavily on Dean's uncorroborated testimony.

After the "Saturday Night Massacre" of October 20, 1973, WSPF received seven subpoenaed tape recordings of Presidential conversations which had taken place from September 15, 1972, to April 16, 1973. Of particular significance was the tape of the March 21, 1973, morning meeting among the President, Haldeman, and Dean, which recorded the following discussion about payments to the Watergate burglars:

PRESIDENT: How much money do you need?

DEAN: I would say these people are going to cost, ah, a million dollars over the next, ah, few years.

PRESIDENT: We could get that.

DEAN: Um huh.

PRESIDENT: You, on, the money, you need the money. I mean, ah, you can get the money, but its . . .

DEAN: Well I think that we're . . .

PRESIDENT: My point is, you can, you can get a million dollars, and you can get it in cash. Ah, I know where it could be got.

DEAN: Um huh.

PRESIDENT: I mean, ah, it's not easy, but it could be done. But, ah, the question is, who the hell would handle it?

DEAN: That is right. Ah.

PRESIDENT: Any ideas on that?

DEAN: Well I would think that would be something Mitchell ought to be charged with.

PRESIDENT: I would think so too.

* * * * *

PRESIDENT: That's right, that's why, that's why your immediate thing, you've got no choice with Hunt with a hundred and twenty or whatever it is. Right?

DEAN: That's right.

PRESIDENT: Would you agree that that's the buy time thing and you better damn well get that done.

DEAN: I think that he ought to be given some signal anyway to, to . . .

PRESIDENT: . . . Well for Christ's sake get it, in a way that, ah—who, who's gonna talk to him? Colson? He's the one who is supposed to know him.

This tape recording and others received by the Special Prosecutor in December substantially corroborated and added significantly to Dean's allegations. In January 1974, and as argued later at the cover-up trial, the Watergate task force concluded that President Nixon had known prior to March 21, 1973, about the existence of a conspiracy to obstruct justice on the part of his closest White House aides and high officials of his Re-Election Committee, and that on March 21, when the President learned many of the material details of the cover-up and the potential criminal liability of those involved, he had furthered the conspiracy by urging that a cash payment be made to Howard Hunt to "buy time" and by discussing a possible strategy of continuing the cover-up by limited disclosure of some information together with continued concealment of the most damaging evidence. On receiving this analysis, Special Prosecutor Jaworski sought to determine whether an incumbent President could be indicted for a crime.

Determining Whether to Seek the President's Indictment

Counsel to the Special Prosecutor and his staff conducted extensive legal research to resolve whether the Constitution contemplated the impeachment process as the exclusive means for adjudicating the culpability of an incumbent President. As they found, that issue had been largely ignored or only obliquely alluded to at the time of the Constitutional Convention and in the ensuing 186 years.

The question of the President's indictability, which was viewed in the office as obviously momentous in terms of its consequences for the country, resulted in an intense debate among members of the Special Prosecutor's staff. After examining the Constitution, relevant case law, and the historical and contemporary arguments, there appeared to be no textual basis in the Constitution for concluding that an incumbent President—any more than any other Federal official subject to the impeachment process—is immune from the ordinary process of criminal law prior to impeachment and removal from office. Consequently, one approach was that, if a *prima facie* case of obstruction of justice existed on the basis of known

evidence, an indictment of the President would be essential to vindicate the principles that there should be equal justice for all and that no one is above the law. This view held that a failure to indict the incumbent President, in the face of evidence of his criminal activity, would seriously impair the integrity of the criminal process. Such impairment would be all the more severe because the President was the very man in whom the Constitution reposes the final obligation to ensure that the law is obeyed and enforced, and because his actions appeared to have been designed to place himself and other individuals beyond the reach of the law.

The other approach was that the impeachment process should take precedence over a criminal indictment because the Constitution was ambivalent on this point and an indictment provoking a necessarily lengthy legal proceeding would either compel the President's resignation or substantially cripple his ability to function effectively in the domestic and foreign fields as the Nation's Chief Executive Officer. Those consequences, it was argued, should result from the impeachment mechanism explicitly provided by the Constitution, a mechanism in which the elected representatives of the public conduct preliminary inquiries and, in the event of the filing of a bill of impeachment of the President, a trial based upon all the facts. Any indictment could then be brought after those proceedings were completed. Under this view, a single, unelected prosecutor should be hesitant to invoke the criminal justice system, prior to the completion of pending impeachment hearings, especially when the constitutionality of such a course remained in doubt. There was also concern that an indictment of the President would suspend the impeachment proceedings until after his criminal trial.

The Special Prosecutor concluded that the Supreme Court, if presented with the question, would not uphold an indictment of the President for the crimes of which he would be accused. Accordingly, he thought it would not be responsible conduct to recommend that the grand jury return an indictment against the President, particularly when the impeachment proceedings were ongoing. Since the Special Prosecutor's charter mandated his investigating allegations against the President and authorized reports to the Congress, he then examined the legality of a grand jury presentment concerning President Nixon, and the possible transmission of evidence pertinent to the question of his involvement to the House of Representatives. After additional legal research and deliberation within the office, the Special Prosecutor determined that this course of action would be both constitutional and appropriate. It was his view that the House of Representatives, in the first instance, was the appropriate body under the Constitution to examine evidence relating to the President, and to determine whether he should be charged with conduct justifying impeachment and removal from office. Many alternatives for

the form of such a report were considered; the possibilities included a presentment detailing all the evidence in narrative form, a conclusory summary of grand jury findings of fact and conclusions of law, or a transmission of relevant witness testimony without comment or conclusions. The Special Prosecutor advised the grand jury to submit a report with evidence relating to the President to Judge Sirica, and to recommend that the judge transmit such evidence to the House Judiciary Committee.

In order to avoid any claim of unilateral action on the part of the Special Prosecutor in the event that he should name the President as a co-conspirator during pre-trial proceedings in the Watergate case, Jaworski also sought the grand jury's judgment on his opinion that the President was a member of the charged conspiracy and that evidentiary considerations at a cover-up trial mandated naming the President as a participant in the conspiracy. Thus, when the grand jury voted to indict seven men in connection with the Watergate cover-up, it also voted to name Richard M. Nixon as one of the 18 unindicted co-conspirators in an alleged conspiracy to obstruct justice.

At the time the grand jury handed up the indictment on March 1, it also submitted a Report and Recommendation advising the Chief Judge that it "had heard evidence that it regards as having a material bearing on matters within the primary jurisdiction" of the House Judiciary Committee in its impeachment inquiry, but that it ought "to defer to the House of Representatives" in determining what action was warranted by the evidence. The grand jury recommended that the sealed materials accompanying the report be transmitted to the House Judiciary Committee. The materials included 12 recordings of Presidential conversations and testimony pertinent to President Nixon's involvement in the Watergate matter.

In a March 6 hearing before Judge Sirica on the disposition of the grand jury report, James St. Clair announced for the President that he would furnish to the Judiciary Committee all the materials that had previously been furnished to the Special Prosecutor's office. The Special Prosecutor's counsel argued that the materials the White House had agreed to supply to the Committee were not necessarily the same as those the grand jury asked the court to transmit to the Committee. John Doar and Albert Jenner, appearing on behalf of the Committee, requested that the Court deliver the grand jury report to enable the Committee to discharge its constitutional obligation with the aid of the best information available. In a March 8 letter from Committee Chairman Peter Rodino to Judge Sirica, Rodino stated that a unanimous resolution of the Committee reflected its view that in constitutional terms it would be unthinkable if the material was kept from the House of Representatives. Judge Sirica

ruled on March 18 that the grand jury report and accompanying materials should be delivered to the Committee.

On March 20, two defendants named in the Watergate cover-up indictment, H. R. Haldeman and Gordon Strachan, filed a petition for a writ of mandamus with the Court of Appeals to block the delivery of the materials to the Committee. The next day, the Court denied the petition, stating that the President, as the focus of the grand jury report and the person who presumably would have the greatest interest in its disposition, interposed no objection to the District Court's action. As a result, the report was delivered to the House Judiciary Committee on March 26. In addition, the President delivered to the Committee the materials he had given to the Special Prosecutor. These included 12 recordings related to Watergate, seven related to ITT, dairy, and "Plumbers" matters, and numerous documents relevant to these areas.

Cooperation With the House Judiciary Committee

H. Res. 803, adopted by the House of Representatives on February 6 by a vote of 410 to 4, explicitly authorized the House Judiciary Committee to investigate whether grounds existed for the impeachment of Richard Nixon. The resolution also granted the Committee the power of subpoena for its investigation. Preliminary discussions on liaison between the staff of the House Judiciary Committee and the Special Prosecutor's office had been held more than two months earlier. In a meeting on November 20, 1973, between attorneys from the Special Prosecutor's office and the Judiciary Committee, Deputy Special Prosecutor Ruth had assured the Committee of WSPF's cooperation so long as such cooperation did not interfere with WSPF investigations and trials and investigative sources were protected.

Ruth's pledge was subsequently honored by WSPF, despite a minor problem which arose in February 1974, when the Committee requested a detailed list of recordings, documents and other material the Special Prosecutor had received from the White House, plus a list of the requests for evidence that had not been met. Special Prosecutor Jaworski's original position was that Rule 6(e) of the Federal Rules of Criminal Procedure, which bars disclosure of matters occurring before a grand jury, prevented him from revealing this information. However, when St. Clair stated he had no objection, Jaworski supplied the Committee with the requested lists. On February 25, after the Judiciary Committee received the list of materials obtained by the Special Prosecutor from the White House, Doar asked the White House to furnish the Committee with copies of certain materials, including 19 tape recordings of Presidential conversations theretofore given to the Special Prosecutor, and all tape recordings, notes and

other writings relating to 42 specifically identified Presidential conversations which had not been supplied to the Special Prosecutor.¹

As the Judiciary Committee's inquiry progressed, its attorneys recognized the need to gain access to materials under seal of the court in a number of "Watergate"-related cases. In each instance, the Committee directed a formal motion to the court, with a request to the Special Prosecutor to state his position. Responding to such an application in April by the Committee,² Jaworski stated that he had no objection to having Committee staff review the material but was opposed to unsealing it. In one instance, Jaworski opposed access to the record of the medical examination of ITT lobbyist Dita Beard on the grounds that the results of the examination were not relevant to the Committee's inquiry and that disclosure would be unwarranted intrusion on Beard's rights. Jaworski also objected to access to grand jury testimony submitted to Judge Gesell in the prosecution of former White House aide Dwight Chapin, due to the provisions of Rule 6(e). In May, the Judiciary Committee again requested access to additional materials sealed by the court,³ and again Jaworski was asked to state his position. The Special Prosecutor replied that he had no objection to the granting of the Committee's access to these materials, since they did not appear likely to prejudice any individuals. In addition to sealed materials, the Judiciary Committee also requested copies of the grand jury testimony of Egil Krogh, David

¹ The 42 Presidential conversations were not provided, and on April 11, 1974, the House Judiciary Committee issued the first of eight subpoenas directed to the President. In partial response to the subpoena, the President on April 30 supplied to the Committee, and released publicly, edited transcripts of 31 of the 42 subpoenaed conversations, claiming that the other 11 conversations had either not been recorded or could not be located. On May 1, the Judiciary Committee formally advised the President by letter that he had failed to comply with its subpoena. The President's failure to comply with this and other subpoenas formed the basis for Article III of Impeachment later adopted by the House Judiciary Committee.

² The application sought material under seal in connection with the following matters: *United States v. Chapin*, Crim. No. 990-73; *United States v. Krogh*, Crim. No. 857-73; *In Re Grand Jury Proceedings*, Misc. 47-73; *In Re Grand Jury Proceedings*, Misc. 108-73; *United States v. Liddy, et al.*, Crim. No. 1827-72; *Halperin v. Kissinger, et al.*, Civil No. 1187-73; *Ellsberg, et al. v. Mitchell, et al.*, Civil No. 1879-72; *Nader v. Internal Revenue Service*, Civil No. 1851-72; *Nader v. Butz*, Civil No. 148-72; *Common Cause v. Finance Committee to Re-Elect the President, et al.*, Civil No. 1780-72.

³ These were the May 13, 1974, transcript of *in camera* hearings on the President's motion to quash the April 18 subpoena issued in *United States v. Mitchell, et al.*, the May 13, 1974, transcript of *in camera* hearings on the tape experts' report and a pre-publication copy of the report. In addition, the Judiciary Committee requested permission to listen to the June 20, June 30 and September 15, 1972, conversations to determine whether they were relevant to the Committee's inquiry.

Young and Henry Petersen in connection with the indictment returned in the Fielding break-in case. This testimony was supplied to the Committee by the court.

The Special Prosecutor's office also supplied information directly to the Committee throughout the impeachment inquiry. The basis for WSPF's action was set forth in a May 8 letter from Jaworski to Doar in which the Special Prosecutor stated his understanding that, although WSPF was being asked to provide the information voluntarily, the Committee was prepared to fulfill its responsibilities by issuing subpoenas. On the basis of this understanding, Jaworski determined that his office would furnish such relevant information requested by the Committee as it possessed, within the bounds of relevant laws and regulations. Jaworski also informed Doar that WSPF staff attorneys would contact Committee staff attorneys to coordinate the furnishing of requested information.

On May 9, Ruth notified WSPF task force leaders of the procedures to be followed in providing information to the Committee: there could be no disclosure of testimony presented before a grand jury; no disclosure of information received from the White House (Doar was arranging to receive from St. Clair what the White House had supplied to the Special Prosecutor); documentary evidence would be furnished only when the source of the information consented (the same procedure used with the Senate Select Committee); only information directly related to possible Presidential involvement would be furnished; confidentiality of witnesses would be preserved if necessary; and no notes of office interviews were to be supplied. Ruth further directed that WSPF staff members recommend the names of witnesses to be interviewed by the Committee and the topics to be covered in such interviews.

Pursuant to this arrangement, the Special Prosecutor's office provided the impeachment inquiry staff with numerous investigative leads and with non-grand jury materials. Doar was permitted to examine, in the Special Prosecutor's office, a summary memorandum concerning "allegations involving the President." In addition, the Committee reviewed WSPF's copies of White House transcripts of Nixon-Dean conversations between September 15, 1972, and April 16, 1973, to determine if there were any discrepancies between them and the transcripts published in the President's submission to the Committee. The prosecutors also attempted to save the Committee's time by steering its investigation away from allegations that WSPF had already determined to be frivolous or unfounded.

Since one of its areas of investigation was the relationship between the White House and WSPF and the extent of White House cooperation with the Special Prosecutor, the Committee requested and received from the Special Prosecutor's office copies of correspondence and memoranda relating to material sought from the White House

by Special Prosecutors Cox and Jaworski. WSPF also supplied to the Committee materials on Cox's relations with the White House and with Attorney General Richardson and on Jaworski's relations with the White House.

Cooperation between WSPF and the Committee was mutual. The Special Prosecutor requested information from the Committee to provide defendants with prior statements and testimony of Government witnesses relating to their trial testimony as well as any material in the Government's possession favorable to the defendants. Although WSPF contended that transmission of Congressional testimony to defendants was not required by law, the Office voluntarily provided such information, including Committee staff interviews of Egil Krogh for the Fielding break-in trial, staff interviews and statements of individuals connected with the Watergate cover-up trial, and staff interviews and documents of individuals having knowledge of President Nixon's tax returns and personal finances.

As a result of the Committee's investigation, on June 18 and 19, 1974, Doar presented to the Committee a "Statement of Information" containing evidence on the events that led to the appointment of Elliot Richardson as Attorney General, the creation of the Watergate Special Prosecution Force, the appointment of Archibald Cox, the authority and jurisdiction of the Special Prosecutor's office, the investigations initiated by the Special Prosecutor and the response of President Nixon to those investigations, the issuance of subpoenas to the President, the litigation arising out of his refusal to comply with those subpoenas, the firing of Cox, the appointment of Leon Jaworski, and the court hearings on the 18½ minute erasure on the June 20, 1972, tape.

On July 29, by a vote of 28 to 10, the Committee adopted a second Article of Impeachment against President Nixon. Article II charged that the President had:

... . . . repeatedly engaged in conduct violating the constitutional rights of citizens, impairing the due and proper administration of justice and the conduct of lawful inquiries, or contravening the laws governing agencies of the executive branch and the purposes of these agencies.

As an example of such conduct, the Committee stated:

In disregard of the rule of law, he knowingly misused the executive power by interfering with agencies of the executive branch, including the Federal Bureau of Investigation, the Criminal Division and the Office of Watergate Special Prosecution Force, of the Department of Justice, and the Central Intelligence Agency, in violation of his duty to take care that the laws be faithfully executed.

As supporting evidence for its conclusion that President Nixon had impeded the Special Prosecutor's investigation, the Committee

noted the White House delay in making information available to the Special Prosecutor and, in some cases, withholding documents, the concealment of the White House taping system, the firing of Cox, and the refusal to cooperate with Jaworski.

The President's Resignation; Further Consideration Of Indictment

On July 24, 1974, the Supreme Court announced its unanimous decision in *United States v. Nixon* and ordered the President to turn over additional tape recordings of Presidential conversations subpoenaed for use in the Watergate cover-up trial then scheduled to begin in September. Among the subpoenaed conversations were those of June 23, 1972, between H. R. Haldeman and the President. On Monday, August 5, St. Clair and Alexander Haig, the President's chief of staff, telephoned Jaworski to inform him that the June 23 tape recording revealed the President's early knowledge of the Watergate cover-up and a possible violation of law in his misuse of a Federal agency. On Thursday, August 8, Jaworski met with Haig, at the latter's request. Jaworski later told members of his staff that Haig had called the meeting to inform him of the President's decision to resign, but that during the meeting no promises or understandings of any kind had been either requested or offered. In a statement issued immediately after the President's resignation announcement, the Special Prosecutor said:

There has been no agreement or understanding of any sort between the President or his representatives and the Special Prosecutor relating in any way to the President's resignation.

The Special Prosecutor's Office was not asked for any such agreement or understanding and offered none. Although I was informed of the President's decision this afternoon, my office did not participate in any way in the President's decision to resign.

President Nixon's resignation became effective at noon on Friday, August 9. Shortly thereafter Jaworski was contacted by Herbert J. Miller, Jr., an attorney for the former President. During several meetings between Jaworski and Miller in August, Miller argued that the former President should not be indicted because the massive publicity resulting from both the impeachment proceedings and his resignation would make it impossible to select an impartial jury. On September 4, Miller submitted to the Special Prosecutor an extensive memorandum supporting this view. Research by the WSPF staff disputed Miller's position, however, and Jaworski concluded that any prosecution of the former President might require a nine-month to one-year delay in bringing a case to trial in order to allow existing and foreseeable pre-trial publicity to dissipate.

Another question raised in the wake of the resignation was whether the former President should be included as a defendant in the Water-

gate cover-up case. Jaworski invited members of WSPF's legal staff to submit their views on this question and other issues surrounding possible criminal action against the former President, and many did. Since it was evident to the Special Prosecutor and to staff members that inclusion of the former President would entail considerable if not indefinite delay of the trial, which was then scheduled to begin on October 1, Jaworski decided against such inclusion. He also decided to defer any criminal action against the former President until the cover-up jury was sequestered, to eliminate the possibility that the jurors might be subjected to additional pre-trial publicity.

The Pardon

On August 28, President Ford held a nationally televised press conference, his first since taking office. During that press conference, the President answered several questions regarding a possible pardon for his predecessor:

Q: Mr. President, aside from the Special Prosecutor's role, do you agree with the Bar Association that the laws apply equally to all men, or do you agree with Governor Rockefeller that former President Nixon should have immunity from prosecution, and specifically, would you use your pardon authority, if necessary?

A: Well, let me say at the outset that I made a statement in this room in the few months [sic] after the swearing-in, and on that occasion I said the following: That I had hoped that our former President, who brought peace to millions, would find it for himself.

Now, the expression made by Governor Rockefeller, I think, coincides with the general view and the point of view of the American people. I subscribe to that point of view, but let me add in the last ten days or two weeks I have asked for prayers for guidance on this very important point.

In this situation, I am the final authority. There have been no charges made, there has been no action by the courts, there has been no action by any jury, and until any legal process has been undertaken, I think it is unwise and untimely for me to make any commitment.

* * * * *

Q: May I just follow up on Helen's question: You are saying, sir, that the option of a pardon for former President Nixon is still an option that you will consider, depending on what the courts will do.

A: Of course, I make the final decision. Until it gets to me, I make no commitment one way or the other. But I do have the right as President of the United States to make that decision.

Q: And you are not ruling it out?

A: I am not ruling it out. It is an option and a proper option for any President.

Q: Do you feel the Special Prosecutor can in good conscience pursue cases against former top Nixon aides as long as there is

the possibility that the former President may not also be pursued in the courts?

A: I think the Special Prosecutor, Mr. Jaworski, has an obligation to take whatever action he sees fit in conformity with his oath of office, and that should include any and all individuals.

* * * * *

Q: Mr. President, you have emphasized here your option of granting a pardon to the former President.

A: I intend to.

Q: You intend to have that option. If an indictment is brought, would you grant a pardon before any trial took place?

A: I said at the outset that until the matter reaches me, I am not going to make any comment during the process of whatever charges are made.

Jaworski had made it plain to staff members that he would not seek the former President's indictment if President Ford intended to pardon him. Accordingly, he met with Philip W. Buchen, President Ford's counsel, on September 4. Jaworski reported later to staff members that during this meeting he had advised Buchen that the President's statements at the press conference had put the Special Prosecutor in a "peculiar position" since the President's comments suggested that any action taken by WSPF against former President Nixon might prove to be futile. Jaworski also reported that he had made no recommendation to Buchen concerning a possible pardon, since he considered the issue to be wholly the President's prerogative and felt that it would be inappropriate for him to make an unsolicited recommendation. At Buchen's request as to the probable length of time between an indictment and a trial, Jaworski delivered to him a letter expressing the following view on trial delay:

The factual situation regarding a trial of Richard M. Nixon within constitutional bounds, is unprecedented. It is especially unique in view of the recent House Judiciary Committee inquiry on impeachment, resulting in a unanimous adverse finding to Richard M. Nixon on the Article involving obstruction of justice. The massive publicity given the hearings and the findings that ensued, the reversal of judgment of a number of the members of the Republican Party following release of the June 23 tape recording, and their statements carried nationwide, and finally, the resignation of Richard M. Nixon, require a delay, before selection of a jury is begun, of a period from nine months to a year, and perhaps even longer. This judgment is predicated on a review of the decisions of United States Courts involving prejudicial pre-trial publicity. The Government's decision to pursue impeachment proceedings and the tremendous volume of television, radio and newspaper coverage given thereto, are factors emphasized by the Courts in weighing the time a trial can be had. The complexities involved in the process of selecting a jury and the time it will take to complete the process, I find difficult to estimate at this time.

The situation involving Richard M. Nixon is readily distinguishable from the facts involved in the case of *United States v.*

Mitchell, et al., [the Watergate cover-up case] set for trial on September 30th. The defendants in the Mitchell case were indicted by a grand jury operating in secret session. They will be called to trial, unlike Richard M. Nixon, if indicted, without any previous adverse finding by an investigatory body holding public hearings on its conclusions. It is precisely the condemnation of Richard M. Nixon already made in the impeachment process, that would make it unfair to the defendants in the case of *United States v. Mitchell, et al.*, for Richard M. Nixon now to be joined as a co-conspirator, should it be concluded that an indictment of him was proper.

The *United States v. Mitchell, et al.*, trial will within itself generate new publicity, some undoubtedly prejudicial to Richard M. Nixon. I bear this in mind when I estimate the earliest time of trial of Richard M. Nixon under his constitutional guarantees, in the event of indictment, to be as indicated above.

During their meeting, Jaworski also submitted to Buchen a memorandum prepared by Deputy Special Prosecutor Ruth, listing ten matters under investigation which "may prove to have some direct connection to activities in which Mr. Nixon is personally involved." The memorandum cautioned that "none of these matters at the moment rises to the level of our ability to prove even a probable criminal violation by Mr. Nixon." The memorandum explicitly stated, however, that it was not intended to deal with the former President's possible liability in connection with the Watergate cover-up.

On September 8 President Ford granted a "full, free and absolute" pardon to former President Nixon for all offenses committed during Mr. Nixon's tenure as President (January 20, 1969, through August 9, 1974). President Ford's action generated extensive discussion and legal research by WSPF.

This focused upon two possible theories to challenge the pardon. First, was it invalid because it preceded any indictment or conviction? And second, despite the President's inherent constitutional powers to control all law enforcement decisions, whether by directing that an investigation not proceed, ordering an indictment dismissed, or granting a pardon, had the President voluntarily bound himself through the Special Prosecutor's charter not to exercise his constitutional pardon powers when the exercise of that power would interfere with the independent judgment of the Special Prosecutor to decide whom to prosecute?

The Special Prosecutor initially declined to make public any of his views concerning the pardon in view of the approaching Watergate trial and the order of the court regarding pre-trial publicity. Later, after the Watergate trial jury had been sequestered, he stated the basis of his decision not to challenge the validity of the pardon in a

letter to Attorney General William Saxbe, dated October 12, which accompanied his letter of resignation as Special Prosecutor:

Although not appropriate for comment until after the sequestering of the jury in *United States v. Mitchell, et al.*, in view of suggestions that an indictment be returned against former President Richard M. Nixon questioning the validity of the pardon granted him, I think it proper that I express to you my views on this subject to dispel any thought that there may be some relation between my resignation and that issue.

As you realize, one of my responsibilities, not only as an officer of the court, but as a prosecutor, as well, is not to take a position in which I lack faith or which my judgment dictates is not supported by probable cause. The provision in the Constitution investing the President with the right to grant pardons, and the recognition by the United States Supreme Court that a pardon may be granted prior to the filing of charges are so clear, in my opinion, as not to admit of doubt. Philip Lacovara, then Counsel to the Special Prosecutor, by written memorandum on file in this office, came to the same conclusion, pointing out that:

... the pardon power can be exercised at any time after a federal crime has been committed and it is not necessary that there be any criminal proceedings pending. In fact, the pardon power has been used frequently to relieve federal offenders of criminal liability and other penalties and disabilities attaching to their offenses even where no criminal proceedings against the individual are contemplated."

I have also concluded, after thorough study that there is nothing in the charter and guidelines appertaining to the office of the Special Prosecutor that impairs or curtails the President's free exercise of the constitutional right of pardon.

I was co-architect along with Acting Attorney General Robert Bork, of the provisions some theorists now point to as inhibiting the constitutional pardoning power of the President. The additional safeguards of independence on which I insisted and which Mr. Bork, on former President Nixon's authority, was willing to grant were solely for purposes of limiting the grounds on which my discharge could be based and not for the purpose of enlarging on the jurisdiction of the Special Prosecutor.

Hearings held by the Senate Judiciary Committee subsequent to my appointment make it clear that my jurisdiction as Special Prosecutor was to be no different from that possessed by my predecessor.

There was considerable concern expressed by some Senators that Acting Attorney General Bork, by supplemental order, inadvertently had limited the jurisdiction that previously existed. The hearings fully developed the concept that the thrust of the new provisions giving me the aid of the Congressional "consensus" committee were to insulate me from groundless efforts to terminate my employment or to limit the jurisdiction that existed. It was made clear, however, that there was no "redefining" of the jurisdiction of the Special Prosecutor as it existed from the beginning. There emerged from these hearings the definite understanding that in no sense were the additional provisions inserted in the Special Prosecutor's Charter for the purpose of either enlarging or diminish-

ing his jurisdiction. I did stress, as I argued in the Supreme Court in *U.S. v. Nixon*, that I was given the verbal assurance that I could bring suit against the President to enforce subpoena rights, a point upheld by the Court. This, of course, has no bearing on the pardoning power.

I cannot escape the conclusion, therefore, that additional provisions to the Charter do not subordinate the constitutional pardoning power to the Special Prosecutor's jurisdictional rights. For me now to contend otherwise would not only be contrary to the interpretation agreed upon in Congressional hearings—it also would be, on my part, intellectually dishonest.

Thus, in light of these conclusions, for me to procure an indictment of Richard M. Nixon for the sole purpose of generating a purported court test on the legality of the pardon, would constitute a spurious proceeding in which I had no faith; in fact, it would be tantamount to unprofessional conduct and violative of my responsibility as prosecutor and officer of the court.

Concluding Observations and Recommendations

Normally when prosecutors are asked to recommend reforms, the questions are limited to the criminal justice system. But most of what WSPF personnel experienced in criminal justice was dramatically atypical of criminal justice generally. The prosecutors had adequate resources; defendants were not jailed for long periods of time prior to trial; the courts had time and resources to meet all the demands of Watergate litigation in a detached, unhurried atmosphere; private defense counsel brought all their skills to thorough pretrial investigation, legal attack, trial strategy and fully-briefed appeals; the sections of Federal prisons in which convicted Watergate defendants served their terms all lacked the small, inhuman spaces in which most American criminals reside, locked into their idleness for 17 hours each day; and constant press and public scrutiny provided a careful watchdog to make sure that Government investigations proceeded without abuse of power or undue leniency. Watergate did not educate American citizens about the normal, day-to-day criminal justice process.

In considering what recommendations to include in this report, WSPF concentrated on what it did observe: criminal abuse of power by Government officials in high places; historical growth of secrecy in the Federal executive branch unchecked by Americans and their elected Congress; unchallenged, subjective judgments by the executive branch in identifying persons and organizations that constitute an impermissible threat to the national interest and to executive policy; an undemocratic condition wherein money is power, and skillful, cynical public relations cements that power; and finally, a silent, sometimes grudging, sometimes willful conclusion by some Government representatives that ethical standards are irrelevant because quick implementation of policy goals is mandatory, but achievable only by social and personal injustices to others.

These conclusions all arose from observing how Government officials and agencies actually grapple with the legitimate demands upon them. The demands of national security require extraordinary judgment. The separation of powers concept requires judicious use of the privilege doctrine. Politicians cannot be elected without extensive campaign funds and loyal friends who want rewards. Individual

requirements for personal success seem always to demand that one must "ride with the system." And a leader hoping to implement his policies is loathe to choose anyone whose independence or unpredictable mind may eventually undermine or delay those goals.

These demands have always had, and will continue to have, inherent potential for abuse of power. National security can easily be used to justify unconstitutional actions, and executive privilege can then be invoked to justify the failure to disclose these actions. Subjective distrust can be identified mistakenly with a national need that justifies massive intelligence systems with permanent storage and illicit use of personal information. Political survival, rationalized by one's perceived ability to accomplish the national will, can too easily justify the acceptance of "big money" and the granting of instant access to any friend of one's cause or one's administration. The leader who sets out to accomplish his goals may appoint as executives only those who helped him along the political path and who will give him support that disregards independent analysis or the demands of personal will and courage.

This brief and, by no means, original or exclusive catalog should sound familiar to all readers of this report. Many of the Watergate phenomena had their historical precedents. Many had grown with no deterrence from other branches of Government. Others had grown without questions from the people and from the press. Watergate should not be analyzed merely in the context of each individual abuse of power that prosecutors were told to investigate. As with any coalescing of activities that lead to a national crisis, so too did Watergate grow from historical roots that presaged abuses of institutional power.

If Watergate was an insidious climax to recent and hitherto subtle historical trends, the formulation of recommendations must begin with the simple, but basic, observation that democracies do not survive unless elected officials do what they are supposed to do and citizens maintain vigilance to see that they do. The public unfolding of Watergate abuses resulted from citizen, press and official actions. Nothing can replace that kind of vigilance; and recommendations for new laws or new institutions are insignificant when compared to the stubborn, plodding, daily work of Americans and their elected representatives in watching over and channeling the power of their national Government, the power of concentrated wealth, the power of officially spoken and written words, and the power of secret bureaucracies.

As prosecutors searching only for facts that disclose or disclaim criminal activity, WSPF lacks the expertise to propose a broad base of political and social change. The recommendations that follow are not so intended. The proposals are modest but their implementation would probably help. Most appear easy and obvious. But that is a good way to start testing a Nation's willingness to learn from its past.

RECOMMENDATIONS

Protecting the Integrity and Effectiveness of the Prosecution Function

The integrity of Government officials, from the President down, depends in part on the credibility of criminal statutes as a deterrent to misconduct. This credibility in turn depends on the capacity of the system of justice to investigate and prosecute wrongdoing wherever it occurs. At a minimum, this means that the Department of Justice must be capable of exercising its prosecution functions free of undue influence or conflicts of interest. At the same time, many of the functions of the Department are legitimate subjects of Presidential concern on a policy level, and the President needs as Attorney General a legal adviser in whom he has full confidence. If the Department is properly insulated from partisan politics and from service to an Administration's purely political interests, it would not seem necessary to take the major institutional steps of making the Attorney General's office elective or creating a permanent special prosecutor's office.

Independence of Department of Justice Officials. The President should not nominate and the Senate should not confirm as Attorney General, or as any other appointee in high Department of Justice posts, a person who has served as the President's campaign manager or in a similar high-level campaign role. A campaign manager seeks support for his candidate and necessarily incurs obligations to political leaders and other individuals throughout wide geographical areas. If he then takes a high position in the Justice Department, he may take—or appear to take—official actions on the basis of those commitments rather than on appropriate legal and policy grounds. The Attorney General and other Justice Department appointees should be lawyers with their own reputations in the legal profession, with capacity and willingness to make independent judgments, and with the authority to choose similarly qualified persons for subordinate positions. In advising and consenting on Presidential nominees, Senators should apply to Justice Department appointees standards of character and independence similar to those they apply to nominees for the Supreme Court. Similar standards should attach to the appointment and confirmation of United States Attorneys.

The Hatch Act, which prohibits most Federal employees from taking an active part in political management or campaigns, should be amended to apply to all employees of the Department of Justice, including the Attorney General.¹ However, the amendment should make clear that high Department officials are not violating the

¹ Current penalty provisions may not be suited to such a revision. If an amendment is contemplated, thought must be given to appropriate sanctions for violations.

prohibition of political activity when they discuss and defend Department policies and actions on their merits in public forums.

Contacts About Pending Cases. In August 1973, Attorney General Richardson issued Order No. 532-73, requiring all Justice Department employees to record in memorandum form each oral communication "concerning a case or other matter pending before the Department with a non-involved party indicating an interest in the case or matter." This order was meant to deter improper contacts by creating a written record of any attempt to influence Department handling of cases.

Subsequent debate within the Department of Justice has questioned the breadth of the order and the lack of an enforcement mechanism. For example, the memorandum as now written could include casual social contacts in which a total stranger voices a citizen view about a pending Department matter.

The Attorney General should resolve these problems of coverage and reissue the Order. Attempted political persuasion and other efforts by non-involved parties to secure direct, out-of-channel access to Department personnel should all be part of official records.

Increased Federal Efforts Against Corruption Without Creation of a Permanent Special Prosecutor. The Senate Select Committee reacted to their Watergate hearings by recommending the creation of a permanent special prosecutor's office. The proposed new officer would be appointed by the judiciary and confirmed by the Senate. He would be independent of the Attorney General in making all his decisions and have jurisdiction over most corrupt acts committed by Federal employees and also over political campaign crimes.

The principal reason cited for such an institution is the perceived incapacity of the Justice Department to investigate fully allegations of criminal conduct by high officials. Since the Attorney General is a Presidential appointee, it is argued, his subordinates cannot be expected to seek or uncover misconduct by high officials whose prosecution might embarrass the President. The problem is most acute, of course, when the alleged wrongdoer is the President himself; but it is substantial when the subject of investigation is a Presidential appointee at any level. Justice Department investigators may be equally frustrated in efforts to prosecute the President's judicial appointees or political allies in Congress; even members of Congress who belong to the opposing party may be immune from prosecution because of a "live and let live" political tradition that survives changes of Administration and protects politicians even after they leave office. An independent special prosecutor, not subject to such considerations, would pursue wrongdoing in Government solely on an objective basis.

No one who has watched "Watergate" unfold can doubt that the Justice Department has difficulty investigating and prosecuting high officials, or that an independent prosecutor is freer to act according

to politically neutral principles of fairness and justice. But the question is whether such independence should be institutionalized on a permanent basis. Do the advantages of such a step outweigh its disadvantages?

WSPF is opposed to the idea of extending the special prosecutor concept on a permanent basis. Central to the question is the fact that such a public officer would be largely immune from the accountability that prosecutors and other public officials constantly face. Lack of accountability of an official on a permanent basis carries a potential for abuse of power that far exceeds any enforcement gains that might ensue. An independent prosecutor reports directly on ongoing investigations to no one, takes directions from no one and could easily abuse his power with little chance of detection. Although matters that reach court obviously invoke court control over a prosecutor's public conduct, the discretionary process of initiating and conducting investigations bears great potential for hidden actions that are unfair, arbitrary, dishonest, or subjectively biased.

Ordinarily, prosecutors are accountable either directly to the electorate or indirectly through the elected officials who appoint them. Under proposed legislation, a permanent special prosecutor would not be subject to such accountability. In extraordinary situations such as "Watergate," an independent prosecutor can be held accountable directly to the public because his actions are subject to intense and continuous press scrutiny. But such high visibility cannot be expected for a permanent office dealing day to day with less explosive matters.

Much of the Watergate and preceding abuses resulted from the public's delegation of public responsibilities to powerful men whose judgments were trusted and whose claimed need for secrecy was always accepted. Men with unchecked power and unchallenged trust too often come to believe that their own perceptions of priorities and the common good coincide with the national will. There is no reason to believe that, in the long run, an independent special prosecutor's office would avoid this status.

Other problems exist. Anyone who has observed bureaucracies realizes that a "special" organization rarely retains its "special" qualities beyond a 3-year period. New organizations, large or small, start with a burst of speed, energy, imagination, enthusiasm, flexibility, long daily hours, and almost uniform high quality of personnel. That level is hardly ever maintained over a long period by a permanent organization in either the public or private sector. This is a problem for Government generally and should be addressed as such, not just as to law enforcement. But there is no reason to believe that a permanent special prosecutor's office would be immune from the rigidity that comes over most organizations after the initial period. Indeed, this would probably happen to the Watergate Special Prosecution

Force if it were to continue beyond the period in which it has been needed. Such rigidity is especially likely, and especially harmful, in an agency that is as unaccountable as a permanent special prosecutor would be.

A third reason for opposing the proposed new office relates to problems with which WSPI constantly wrestled. Should our interpretation of the campaign laws, the coverage of statutes of limitation, and the perjury, false statement, and obstruction statutes coincide with those of the Justice Department? Should our policies regarding the use of various intrusive investigative techniques coincide with the Attorney General's? One is moved to answer in the affirmative, since those policies are promulgated under normal democratic conditions of accountability and since different policies easily lead to unequal justice. These policy determinations provide great potential for a special prosecutor's abuse of power. He can easily stretch from proper investigative techniques or attempt unfairly to widen the conduct or the persons included within a criminal sanction. Thus, that relatively small group of persons falling within a permanent special prosecutor's jurisdiction could be subject to a much heavier hammer of Federal criminal law than the rest of the Nation which is subject to Department of Justice standards.

In looking for alternatives to a permanent, independent prosecutor, one must first turn to the problem of resource allocation. When the Department of Justice commenced a specialized, intensive effort against organized crime in 1958—with a dramatic expansion in 1961—prosecutors found a nationwide string of racketeering enterprises that only a few enforcement personnel had thought existed. So too, in recent years, with adequate resources and personnel the United States Attorneys for the Southern District of New York, the Northern District of Illinois, Maryland, Florida, New Jersey and elsewhere were able to uncover extensive Federal corruption. Thus, these Justice Department representatives have prosecuted Federal executives, members of Congress and a Vice President.

This visible, concentrated effort should be institutionalized within the Department of Justice. An effort similar to that devoted to organized crime should be placed in an expanded section within the Criminal Division or, similar to the proposal of Senators Baker and Percy, in a new Division of Government Crimes with an Assistant Attorney General appointed by the President. This new office should also have constant coordination and monitoring responsibilities with the various Inspectors General who now inquire into possible corruption in the Federal executive departments.

In addition, the Attorney General should freely exercise his existing power to appoint special assistants as prosecutors, with independence for particular investigations and cases, whenever a real or apparent conflict of interest threatens public confidence in

the enforcement system. On several occasions, WSPF borrowed lawyers from the Department and special assistants can be afforded the same advantage for their staffs.

Finally, the absence of a permanent, independent prosecutor need not dispel the idea that an independent prosecution office can be appointed in the future when activities by the executive, legislative or judicial branches of Government show the necessity of a temporary office similar to WSPF.

Congress has the power to enact a statute requiring the President or Attorney General to appoint such a prosecutor, with appropriate safeguards of his jurisdiction and independence, and two-thirds majorities of both Houses have the power to override a Presidential veto of such legislation if necessary. In addition, the nature of the relationship between Congress and the executive branch provides other means of compelling such an appointment. WSPF was created because the Senate insisted on such action as a condition of confirming the nomination of an Attorney General. Congress can similarly use its power to appropriate funds and the Senate can use its confirmation power to force such action if necessary. The remedy of impeachment remains available as a last resort.

Attorney Representation of Multiple Interests in Grand Jury Proceedings. In almost every investigation which centers on the criminal activity of one or more members of a hierarchical structure—whether a corporation, labor union, a Government agency, or a less formally organized group—the prosecutor is confronted with a witness who has been called to testify about his employers. Many times, the witness is represented by an attorney who also represents the employer and perhaps is compensated by him. Although the legal profession's *Code of Professional Responsibility* forbids a lawyer from representing conflicting or even potentially conflicting interests, lawyers and judges historically have been reluctant to enforce the Code's mandate strictly. They have taken the position that, so long as the witness understands that his attorney also represents the person or entity about which he will be asked to testify and that he has the right to a lawyer of his own choosing, he cannot be forced to retain new counsel.

No lay witness, however, can realistically be expected to appreciate all the legal and practical ramifications of his attorney's dual loyalties, and in many cases he will be precluded from giving adequate consideration to the possibility of cooperating with the Government by the fear that the fact of his cooperation will be revealed to his employer. A mere inquiry by the judge in open court concerning the witness' preference is not likely to elicit a truthful response. It is necessary, therefore, for the court to intervene more directly by making a factual determination as to the existence of the conflict of interest and then requiring the witness to retain, or appointing for him, counsel who has no such conflict. Although there will obviously be great reluctance to

interfere with the individual's freedom to select his own attorney, the suggested course is the only one that can preserve the equally valid right of the Government to his full and truthful testimony.

Both the courts and the various bar groups should be alerted to the serious issues of professional responsibility arising out of the representation of multiple interests during grand jury investigations,² and Government counsel should press on every justifiable occasion for a judicial ruling on the question of conflict of interest and, where a conflict is found, for the replacement of the attorney involved.

Clarification of the Status under the Freedom of Information Act of Information Obtained in Confidence by Criminal Investigators. Under the Freedom of Information Act as amended in 1974, a prosecutor's investigative files are exempt from disclosure, but only to the extent that production would:

- (A) interfere with enforcement proceedings,
- (B) deprive a person of a right to a fair trial or an impartial adjudication,
- (C) constitute an unwarranted invasion of personal privacy,
- (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,
- (E) disclose investigative techniques and procedures, or
- (F) endanger the life or physical safety of law enforcement personnel.

Much of the information received by WSPF was received either upon an express assurance of confidentiality or upon a reasonable understanding that the information would not be disclosed except as necessary in court proceedings. In some cases, disclosure of such information would not interfere with ongoing investigations or prosecutions, or constitute an unwarranted invasion of anyone's privacy. The question then arises whether the disclosures of such information, even if the source has been identified publicly, would "interfere with enforcement proceedings" and hence be protected from disclosure.

The statute can and should be interpreted to protect the confidentiality of such information. Successful investigation and prosecution, particularly in the areas of official corruption and "white-collar" crime, often depend heavily on the voluntary cooperation of the subjects of the investigation or their close associates. This cooperation would diminish substantially if information from such sources was subject to ready disclosure under the Freedom of Information Act after the inquiry was closed.

² A committee of the American Bar Association is studying the general question of multiple representation in criminal proceedings and should extend its inquiry to cover the grand jury stage as well.

In this sense, public disclosure would interfere with law enforcement proceedings and the information would be protected under the current language of the statute. However, the language is sufficiently ambiguous that its interpretation could involve litigation that would extend for several years. The very existence of such litigation, putting in doubt the validity of prosecutors' assurances to sources of information, might deter many persons from cooperating with Federal law enforcement authorities. The statute's language suggests that Congress weighed the value of such cooperation against the value of disclosure and concluded that the former should receive greater weight. The statute should be amended to make clear that information furnished on a confidential basis to a Federal law enforcement agency is protected from disclosure.

Protecting the Integrity of Executive Branch Functions in Law Enforcement

Some of the actual abuses of "Watergate", and many attempted abuses, can be traced to pressures upon agencies with law-enforcement functions by requests or directives from White House staff members whose purpose was to serve the President's political interest. Executive branch agencies with these kinds of responsibilities, such as the Secret Service, the Federal Bureau of Investigation and the Internal Revenue Service, should respond to Presidential direction in broad policy areas and should be generally accountable to the President for the performance of their functions. But their responsiveness should not be such as to make them part of the President's political apparatus, particularly since their powers and duties involve basic rights of citizens.

Independence of Agency Heads and Staff. The persons appointed by the President and confirmed by the Senate to head such agencies as the FBI, IRS and the Secret Service should, like the Attorney General, be highly qualified individuals, with independent reputations, who had not taken leading roles in the President's political campaigns. They should be capable of making independent judgments and authorized to appoint similarly qualified subordinates. In exercising their power to advise and consent to Presidential nominations of such officials, Senators should stress the sensitivity of the respective agencies' functions and the danger of their over-responsiveness to political concerns.

Congressional Oversight. The oversight powers and responsibilities of Congress can provide an effective restraint on possible misuse of such sensitive agencies. Congress should exercise effective policy oversight in areas subject to abuse, such as law enforcement and intelligence functions. Recent disclosures about some of the activities of the CIA, FBI, and IRS suggest that such oversight has been seri-

ously deficient in the past. Oversight should include regular review of agency policies, the nature of priority programs, allocations of resources, intelligence programs, internal inspection procedures, compliance with audit requirements, and similar indications of the manner in which such agencies are performing their sensitive functions. The oversight function can and should include, without the need for new laws, a regular monitoring of the nature and frequency of White House action directives about individuals subject to possible scrutiny by the enforcement agencies. Policy oversight, however, should not be allowed to become Congressional intervention in particular matters, such as criminal and tax investigations, in which the agencies are engaged; over-responsiveness to the personal or political interests of Members of Congress is no less evil than over-responsiveness to the White House.

Liability of an Incumbent President to Criminal Prosecution. One of the most difficult legal and policy questions WSPF faced was whether to seek an indictment of President Nixon along with the indictment of several of his former aides in connection with the Watergate cover-up conspiracy. After careful deliberation, Special Prosecutor Jaworski concluded that an indictment of President Nixon for such crimes would not be upheld by the Supreme Court, and that the litigation leading to such an adverse decision would be prolonged and might complicate the impeachment inquiry then underway in the House of Representatives. Because of these conclusions and because the evidence regarding President Nixon was clearly relevant to the House inquiry, the Special Prosecutor chose to ask the grand jury to transmit an evidentiary report to the Committee considering the President's impeachment.

The Special Prosecutor's conclusion about the President's indictability was not easily reached, and the legal standard needs clarification. Should such a question arise in the future, it would be helpful to know with more certainty whether the Constitution permits the indictment of an incumbent President, and if so, for what kinds of crimes, and what relationship such a prosecution has to the exercise of Congress' impeachment power. The worst time to answer such questions is when they arise; perhaps the best time is the present, while the memory of relevant events is fresh. Congress should consider these issues and clarify them by constitutional amendment.

Control of the Intelligence and National Security Functions

The executive branch of government exercises its greatest enforcement powers when its agents identify persons or groups as a threat to internal order or to the Nation's security. Acting without court approval, law enforcement agencies can gather, store and use large amounts of information about these persons and groups. These activi-

ties have been scrutinized, and are under scrutiny, by many organizations—the Rockefeller Commission on CIA Activities, the Senate and House Select Committees on Intelligence and subcommittees of the House and Senate Judiciary Committees. Since many of these activities spanned two decades and others did not involve Presidential appointees or White House staff members, WSPF investigations covered only part of these prior federal enforcement efforts. The recommendations of the inquiry groups mentioned above should be given immediate consideration by the executive and legislative branches. The following two suggestions arose from WSPF's work.

Policies Regarding the Intelligence Function. Much of what goes awry in intelligence functions can be laid to secret, subjective judgments about the establishment of priorities for intelligence-gathering, the selection of the kinds of information to be gathered, a failure to analyze gathered information adequately and the stubborn failure to reappraise decisions over time. The intelligence function should be subject to the same policy procedures as any other important government enterprise.

Therefore, each agency with significant intelligence-gathering responsibilities, including the CIA, FBI, and IRS, should formulate written policies that include the purposes for which intelligence is to be gathered, the methods to be used in obtaining information, the kinds of information to be sought, and provisions for periodic review of priorities and purging of records that no longer serve an important or legitimate purpose.

These policy statements should be submitted to a Presidentially-appointed domestic intelligence policy review board that includes agency heads and representatives of the public. The board would hear the justifications for each policy and have the authority to make public recommendations.

The general policy statements of each agency should be made public. This can be accomplished without any threat to the effectiveness of the intelligence function and can serve as guides for press and citizen scrutiny of agency operations.

“National Security” Exception to the Warrant Requirement for Searches and Seizures. In *United States v. Ehrlichman*, which charged that the entry into the office of Daniel Ellsberg's psychiatrist by the White House “Plumbers” constituted a violation of the Fourth Amendment, the Special Prosecutor maintained both in the District Court and in the Court of Appeals that interests of “national security” cannot justify the lack of a judicially-authorized search warrant to enter a citizen's home or office, in order to seize or copy documents. Although the Special Prosecutor acknowledged that Attorneys General in the past in foreign intelligence cases had authorized warrantless physical trespasses to place electronic eavesdropping devices, he argued that no Attorney General and no President had claimed

the constitutional power to authorize or, in fact had authorized warrantless entries to seize documents from citizens. To WSPF's knowledge, that remains a fact.

In the Court of Appeals, however, the Department of Justice filed a brief stating the Department's view on "the legality of forms of surveillance in the United States without a warrant in cases involving foreign espionage or intelligence." The brief continued:

It is the position of the Department of Justice that such activities must be very carefully controlled. There must be solid reason to believe that foreign espionage or intelligence is involved. In addition, the intrusion into any zone of expected privacy must be kept to the minimum and there must be personal authorization by the President or the Attorney General. The United States believes that activities so controlled are lawful under the Fourth Amendment.

In regard to warrantless searches related to foreign espionage or intelligence, the Department does not believe there is a constitutional difference between searches conducted by wiretapping and those involving physical entries into private premises. One form of search is no less serious than another. It is and has long been the Department's view that warrantless searches involving physical entries into private premises are justified under the proper circumstances when related to foreign espionage or intelligence"

The Department's long-held "view" is based solely on policies and authorized practices with regard to electronic surveillance and is not based on any historical record involving authorized physical break-ins to seize tangible items. Moreover, in dealing with the Department on this matter, WSPF found that the historical record even with respect to electronic surveillance is not entirely clear. Attorneys General over the years have not always taken positions consistent with those of their predecessors, and there is no centralized, complete record of prior practices and policies.

This is obviously a matter of great public importance, affecting not only basic constitutional rights but also the national security. Although ultimately the courts must answer the constitutional question—what power if any the President and his chief legal officer (the Attorney General) have to authorize warrantless searches and seizures in the name of national security—the current policy of the executive should be subject to thorough Congressional and public scrutiny. Accordingly, it is recommended:

(a) Past memoranda setting forth the policy positions of the Presidents and Attorneys General should be disclosed publicly, and

(b) The Administration should promulgate publicly its current policy, stating the precise power claimed by the President and setting forth in as great detail as possible the factors and standards that now govern the President's and Attorney General's exercise of discretion in authorizing warrantless foreign intelligence searches and seizures.

Political Financing and Campaign Tactics

Campaign Financing and Reporting. WSPF's experience in attempting to enforce the campaign financing and reporting laws, some newly enacted and others on the books for many years, suggests that continuing enforcement efforts can be improved and that such efforts would be aided by certain changes in the statutory requirements and prohibitions.

1. *Proactive Enforcement Policy.* In many of WSPF's election law investigations and prosecutions, defense counsel contended that there had been a long history of non-enforcement of the applicable criminal statutes, and that the Special Prosecutor's office should take that history into account by deciding either that no charges should be brought or that some mitigation of proposed charges would be appropriate. This argument had its greatest force with respect to the registration and reporting provisions of the universally criticized Federal Corrupt Practices Act, which has been repealed. Only one reported prosecution had ever been brought, in 1934,³ and the Justice Department had long followed a policy, enunciated by Attorney General Herbert Brownell in 1954, of not initiating investigations except upon referral by the Clerk of the House of Representatives or the Secretary of the Senate, the officials to whom reports were required to be made. Such referrals rarely occurred. With respect to the prohibition against contributions by Government contractors (18 U.S.C. § 611), no reported prosecutions had ever been brought. In the case of the prohibition against corporate or labor union contributions (18 U.S.C. § 610) the record was somewhat better: a number of unions and union officials had been prosecuted, and some corporations had also been charged, but generally the individual corporate officers responsible for the making of illegal contributions had not been charged.

It is important to the integrity of both law enforcement and the electoral process that this history not be repeated. The Department of Justice should use the resources and make the effort necessary to monitor actively areas of possible abuse and begin investigations without waiting for formal referrals or complaints. The Department should announce its intent to pursue an aggressive policy of enforcement of the election laws. To give further notice of such an enforcement policy, individual notices should be mailed to candidates for federal office, political committees and their officers, and corporations, labor unions, and their officers.

As a result of the 1974 amendments to the Federal Election Campaign Act, the Federal Elections Commission has a clear responsibility to monitor and investigate campaign violations and make civil dispositions or refer criminal matters to the Department of Justice for possible prosecution. The Commission presumably will discharge its

³ *U.S. v. Burroughs*, 209 U.S. 534.

duties responsibly and effectively, but the existence of the Commission should not inhibit the development and promulgation of new Justice Department enforcement policies, particularly in view of the ongoing legal challenges to the Commission's own enforcement powers. Vigorous enforcement efforts by the Justice Department would have a marked deterrent effect on would-be violators of the election laws.

2. *Federal Election Campaign Act (FECA)*

a. *Reporting responsibility of the chairman of a political committee under 2 U.S.C. § 434(a).* This statute places sole responsibility for filing reports of campaign receipts and expenditures on the treasurer of a political committee. This approach tends to focus the law's requirements on a campaign official who often is not an important figure in the committee hierarchy but merely acts as the chairman's agent. A committee chairman can therefore attempt to avoid responsibility for his committee's reporting violations by claiming that the statute imposes no reporting duty on him. While the "aiding and abetting" provisions of federal criminal law can be used under some circumstances to hold a chairman liable for such violations, the treasurer-centered language of § 434(a) permits the raising of a false issue which can mislead a court or jury. The statute should be amended to place equal reporting responsibility on the chairman and treasurer of a political committee.

b. *Penalty provisions of 2 U.S.C. § 441.* This section, establishing penalties for FECA violations, appears to pose an ambiguity. It reads as follows:

§ 441. Penalties for violations

(a) Any person who violates any of the provisions of this chapter shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(b) In case of any conviction under this chapter, where the punishment inflicted does not include imprisonment, such conviction shall be deemed a misdemeanor conviction only.

This language raised problems in two cases brought by WSPF in which defendants entered guilty pleas to misdemeanor FECA violations and then argued that Section (b) of the statute would not permit the judge to sentence them to imprisonment. WSPF argued that the statute permits a prison sentence for a misdemeanor and does not create any felony designation. In neither case did the sentencing judge accept the defense contention. However, the statute should be amended to clarify Congress' intent, and it is recommended that § 441(b) be eliminated as superfluous.

c. *Statute of limitations: 2 U.S.C. § 455(a).* The FECA was amended in 1974 to require that any prosecution for violations of its provisions, and certain other criminal statutes dealing with campaign financing, be commenced within 3 years of the violation. Before the amendment, under both the FECA and its predecessor the Federal

Corrupt Practices Act, the period of limitation had been 5 years, as it is for almost all Federal crimes. It is often difficult, in dealing with "white-collar" crime generally, to uncover violations and bring violators to indictment even within the normal 5-year period. The difficulty increases when campaign-law violators, including both givers and receivers of contributions, make efforts to conceal the illegal nature of their activities, as many did in the 1972 campaigns. Under such circumstances, with a 3-year statute of limitations, the chances are excellent that many violations will be barred from prosecution by the time they are discovered. Another advantage of a 5-year limitation period is that it permits a new Administration to prosecute violations that might have occurred at any time during the previous President's last term of office, making it impossible for the previous Administration to cover up its election violations and bar pursuit of those crimes by a new Administration circumscribed by the short, 3-year limitations. No convincing reasons have been advanced for granting this special privilege to Federal candidates, and the statute should be amended to readopt the 5-year period now applicable to all other persons in the criminal code.

d. *Intent-centered definitions in 2 U.S.C. § 431(e) and (f).* The Act requires the reporting of "contributions" and "expenditures" by political committees; these subsections define those terms for reporting purposes as contributions or expenditures made "for the purpose of . . . influencing" nominations, primaries, or general elections. This definition seems unnecessarily narrow, permitting campaign officials to contend that contributions received or expenditures made after an election has taken place need not be reported because they could not have been made with the requisite intent to influence the election. Similarly, it has been argued that the campaign-fund expenditures that resulted in "hush-money" payments to the Watergate defendants in 1972 were not reportable because they were not made for the purpose of influencing the election. If the policy behind the Act is to promote disclosure of the financial dealings of political campaign committees, the "definitions" section should be amended to require that committees report all financial transactions in which they engage (subject to the existing minimum dollar amounts), regardless of the purpose of the transaction or whether it occurred before or after an election.

3. *Solicitation and Receipt of Contributions in Federal Buildings (18 U.S.C. § 603).* During the course of its investigations, the Campaign Contributions Task Force learned of instances where members of Congress or other Federal employees accepted voluntary campaign contributions from private citizens in Federal Office buildings. This practice appears on its face to be prohibited by this felony statute, which, in essence, prohibits any person from soliciting or receiving a contribution in any Federal building. The statute's legislative history,

however, indicates that it was intended to protect Federal civil service employees from coercion and thus prohibit the solicitation or receipt of contributions only from such employees. Any other interpretation of the statute would give felony status to any person who merely received campaign funds from any other person in a Federal building, even though the funds were unsolicited and neither person was a Government employee, when the identical conduct if performed a short distance away, i.e., on the sidewalk outside the building, would involve no criminal act at all.

On the basis of that legislative history, the Watergate Special Prosecution Force declined to prosecute in those cases. Some might argue that the solicitation or receipt of political contributions in Federal buildings from non-Federal employees by elected Federal officials should be permitted, but there are strong policy considerations which would support a prohibition against such action by appointed Federal officials, such as cabinet officers or other executive branch officials.

Because of this conflict between the plain meaning of the present statute and the legislative history of this Act, the statute should be amended to state whether it does or does not apply only to contributions to and from Federal employees, and to clarify the question of its applicability to elected as well as appointed officials.

4. Contributions of Corporate or Union Funds Under 18 U.S.C. § 610.

a. Designation of corporate violations as felony or misdemeanor.

The amended statute imposes a fine of \$25,000 for each violation by a corporation or labor union, but does not specify whether such a violation is a felony or misdemeanor. This omission sometimes leads to confusion when a corporation or union pleads guilty to an information alleging a violation of § 610, and an individual is charged under 18 U.S.C. § 2 with causing, aiding, or abetting the violation. The absence of a penalty of imprisonment for such conduct suggests that it is a misdemeanor, but the size of the maximum fine is reserved for the felony classification defined elsewhere in the Federal criminal statutes. Section 610 should be amended to designate a violation by a corporation or union as either a felony or a misdemeanor.

b. Definition of the term "officer." The section prohibits an officer of a corporation or union from consenting to a contribution of corporate or union funds, but does not define the term "officer." WSPF has taken the position, and a trial court has agreed in one case, that the term applies to anyone who performs the managerial functions that an officer ordinarily would perform, regardless of title. But the lack of a definition permits defendants in certain cases to argue that the term applies only to individuals holding a position specifically entitled "officer" in the corporate charter or by-laws, or the laws of the State of incorporation. A definition of "officer" should be added

to Section 610 to include all corporate or union employees who perform the functions of an officer.

c. *Definition of "willful" consent.* The section prohibits corporate or union officers, and campaign officials who receive contributions, from consenting to contributions of corporate or union funds, and distinguishes between the misdemeanor of "consent" and the felony of "willful consent." WSPF has taken the position that "willful consent" by a donor requires only the knowledge of the operative facts and action taken with that knowledge which results in the making of an illegal contribution, rather than the affirmative knowledge that the contribution is illegal. But that position has not been fully tested in litigation and leaves open the question of what is a "non-willful" violation—i.e., what defenses of good faith or reliance on advice of counsel will reduce the violation from a felony to a misdemeanor. A related question is whether the language penalizing "non-willful" violations imposes a standard of strict liability, making a corporate or union officer liable for consenting to a contribution even if he had no knowledge of its corporate or union source. Similarly, in prosecuting recipients WSPF has taken the position that a "willful" violation requires actual knowledge of a contribution's corporate or union source, while a "non-willful" violation is established by reckless disregard of the possibility that a contribution comes from such a source. But it is possible to interpret the statute as one imposing strict liability on recipients as well as donors.

A collateral question is whether there can be a conspiracy to commit a "non-willful" § 610 violation. While one court in a case unrelated to WSPF's work has held that such a conspiracy can be charged, the basis for this finding is unclear in § 610.

Section 610 should be amended to clarify the definitions of "willful" and "non-willful" conduct, preferably as WSPF has interpreted the terms, and to make clear whether a "non-willful" violation can be the object of a conspiracy.

5. *Contributions by Government Contractors Under 18 U.S.C. § 611*

a. *Nature of requisite contractual relationship.* The statute prohibits the giving of a campaign contribution by anyone who has entered into a contract with the United States "either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States . . . or for selling any land or building to the United States . . .," if the contract payment includes funds appropriated by Congress. This language leaves open the question whether a person or firm leasing property to the government is a contractor within the statute's meaning. Based on the section's legislative history, the Department of Justice has taken the position, to which WSPF has adhered, that such a person or firm is not a contractor under the section. However, that position seems inconsistent with the statute's general purpose of preventing improper influence on

decisions about spending government funds. The section should be amended to cover lessors of property along with other contractors.

b. *Liability of individual partners in partnerships.* Section 611 applies to corporations, partnerships, and individuals—anyone holding a contract with the government. Because a corporation is a separate entity from the individuals who own its stock, the Department of Justice and WSPF have taken the position that shareholders of corporations holding government contracts may make contributions of funds they receive from corporate dividends without being in violation of § 611. Under the provisions of § 610, officers and employees of such a corporation also may contribute personal funds, including those derived from corporate dividends, to a political fund established to make campaign contributions with corporate identity. However, because a partnership is not an entity separate from its individual partners, the Justice Department has taken the position that partners may not make personal contributions if their partnership holds a government contract. This leads to the anomalous situation in which corporate shareholders and employees may contribute personal funds either individually or jointly with corporate identity without being in violation of § 611, but members of a partnership which holds a government contract are prohibited from giving similar support to the candidates of their choice. The statute should be amended to place partners and corporate officers and shareholders of firms holding government contracts on the same footing.

c. *General scope of § 611.* The evident purpose of this section is to prohibit the possible use of campaign contributions as a means of influencing Government actions that affect potential contributors. But its coverage is limited to potential donors having a contractual relationship with the Government. Other donors that do not necessarily hold any Government contracts might have an equally if not more compelling interest in influencing Government action—for example, airlines which depend on Government decisions about routes or oil companies depending on Government decisions about import quotas. At the same time, § 611 is broad enough to include any person or firm having any contractual relationship with the Government, no matter how small or insignificant that contract may be in the person's or firm's overall business. In enforcing § 611, WSPF exercised its discretion to limit prosecutions under the statute to firms whose contracts with the Government provided at least 20 percent of their gross receipts for the year in question, and it would seem reasonable to amend the statute to narrow its coverage along those lines. At the same time, the statute should be redrafted to cover contributions by persons or firms whose possible interest in improperly influencing Government action is based on either contracts with the Government or other relationships, such as the regulated character of the person's or firm's business.

Such an amendment might also involve reduction of the disparity of penalties under both § 610 and § 611. As the law now stands, an officer of a corporation with a substantial interest in Government regulatory action, but with no contractual relationship, can be sentenced to two years' imprisonment if he willfully consents to a contribution of corporate funds, while an individual holding a small contract with the Government can be sentenced to five years' imprisonment for making a personal contribution to any federal candidate. It might be appropriate to reduce the maximum penalty under § 611, while broadening the statute's subject-matter coverage. A contribution made for the purpose of influencing a Government action is already subject to a bribery charge.

Questionable Campaign Practices. In addition to its inquiries into possible violations of campaign financing and reporting laws, WSPF investigated allegations of other campaign activities generally known as "dirty tricks." Many of these activities seemed clearly at odds with prevailing standards of acceptable campaign conduct, but did not appear to be covered by existing federal criminal statutes.⁴ As a result, the Senate Select Committee recommended legislation to prohibit the following activities during political campaigns:

- (1) obtaining or causing another to obtain employment in a campaign by false pretenses in order to spy on or obstruct the campaign;
- (2) requesting or knowingly disbursing campaign funds for the purpose of promoting or financing violations of election laws;
- (3) stealing, taking by false pretenses, or copying without authorization campaign documents which are not available for public dissemination;
- (4) fraudulently misrepresenting oneself as representing a candidate (applying to any person, not just candidates and their agents as in § 617).

In addition, legislation has been introduced to prohibit any payment to another person for actions that violate any election law (covering payments of campaign funds and funds from other sources), and to make any violation of State or Federal law a separate Federal offense if committed for the purpose of interfering with or affecting the outcome of a Federal election.

These proposals, designed to eliminate practices which are clearly disruptive of the political process, raise serious questions about the proper role of the criminal justice system in policing day-to-day campaign activities. There are stronger reasons for legislating against

⁴ The Federal criminal code (18 U.S.C. §§ 612, 617) prohibits publication or distribution of campaign literature without a designation of its true source, as well as misrepresentation by a candidate or his agent that he is acting on behalf of another candidate or campaign.

corrupt campaign financing practices than for using criminal sanctions to enforce standards of behavior during the heat of a political campaign. In the former instance, corruption is likely to influence not only the outcome of the campaign but also decisions of elected officials on matters of interest to their contributors; by contrast, "dirty tricks" perpetrated during a campaign have, at most, only a temporary effect, if any.

Several other considerations complicate the question of whether to outlaw "dirty tricks" not encompassed by existing legislation. First, the criminal justice system is not a desirable watch-dog over the daily operations of political campaigns. Proper enforcement efforts would produce a tremendous drain on law enforcement resources and could inhibit the legitimate activities of candidates and their supporters, as well as create dangers of prosecutorial misconduct.⁵ In addition, many "dirty tricks" are exposed during the course of a political campaign, to the detriment of the candidate on whose behalf they are conducted. The experience of WSPF also suggests that most campaign "pranksters" are persons who, because of their youthful inexperience, fail to appreciate the nature of their conduct. Finally, there is the problem of defining prohibited conduct in this area so as to give adequate notice to potential offenders, while at the same time avoiding infringement on the First Amendment rights of candidates and their supporters.

All these considerations suggest the wisdom of keeping criminal prohibitions to a minimum. Both the Constitution and the nation's experience as a democracy suggest that broad criminal restraints on political activity and expression are unnecessary and unwise. Even so, some reforms are desirable. In terms of the criminal law, it might be advisable to prohibit the copying, stealing or taking by false pretenses of campaign documents not available to the public.⁶

The suggestion that campaign "dirty tricks" be dealt with chiefly by the political process is based also on the theory that the recently created Federal Election Commission, if given expanded powers, would be able to detect and expose improper campaign practices. The Commission is presently empowered to receive complaints and conduct

⁵ Since Federal prosecutors are appointed by the President and must be confirmed by the Senate, the integrity of their decision making processes in this area might well be questioned as motivated by political considerations or pressure on the part of those who supported their appointment.

⁶ Since such documents usually have no intrinsic monetary value, they are not protected by state laws relating to theft; rather, they are akin to documents containing proprietary information or "trade secrets" which are protected under the laws of some states. In considering the advisability of such legislation, however, Congress should carefully weigh its First Amendment implications, including its possible effect on persons who disclose documents revealing matters of legitimate concern to voters, such as a candidate's improper actions or inconsistencies between his private views and public statements.

investigations of alleged violations of § 617, as well as transgressions of campaign financing laws. The Commission's authority should be broadened to include investigation of violations of § 612 and of any other legal prohibitions enacted in the future as to campaign tactics. The Commission should also be empowered to adopt standards of campaign conduct to define what behavior is not acceptable in political campaigns, and to enforce such standards through its investigative powers, its authority to assess civil penalties, and its authority to issue public reports describing instances or patterns of misconduct in particular campaigns.

* * * *

One final note, albeit a personal one. One hundred years ago, an America still recovering from its devastating Civil War wrestled with the pay-off scandals of the Grant Administration and approached its centennial celebration. Historians report that few candidates reached the United States Senate without financial support from the "special 'interests'"—railroads, oil companies, textile concerns, the iron and steel industry and mining companies.⁷ The Nation had grown so weary that even the usually optimistic Longfellow wrote:

Ah, woe is me
I hoped to see my country rise to heights
Of happiness and freedom yet unreached
By other nations, but the climbing wave
Pauses, lets go its hold, and slides again
Back to the common level, with a hoarse
Death-rattle in its throat. I am too old
To hope for better days.

Now again, at the Bicentennial, the Nation has grown weary. Much contributed to this, but few can deny that uncovering years of actual and alleged Government abuses has played its part. Institutions once again had to earn the faith of the people in whose names they acted.

That lesson became clear. When Archibald Cox was fired, Americans rose in anger. The telegrams came to us from Middle America—small cities, towns, and hamlets that only the residents had ever heard of. The national Government had offended its people's sense of justice. The citizens wanted to control what would happen, and they eventually did. When vigilance erupted, institutions responded. One must believe that unresponsive power, both public and private, can never overcome that will.

⁷ The historical observations are taken from Samuel Eliot Morison, *The Oxford History of the American People*. 731-3 (Oxford University Press 1965).

Status Report of Cases

WATERGATE SPECIAL PROSECUTION FORCE CRIMINAL ACTIONS

The following matters group by category all WSPP cases and appeals from May 29, 1973 to September 1, 1975:

Watergate Cover-up

The following have been charged with offenses stemming from events following the break-in at Democratic National Committee Headquarters on June 17, 1972:

Charles W. Colson

Indicted on March 1, 1974, on one count of conspiracy to obstruct justice (18 USC Section 371) and one count of obstruction of justice (18 USC Section 1503). Pleaded not guilty March 9, 1974. Indictment dismissed by government June 3, 1974, after guilty plea in *U.S. v. Ehrlichman et al.*

John W. Dean III

Pleaded guilty on October 19, 1973, to an information charging one count of violation of 18 USC Section 371, conspiracy to obstruct justice. Sentenced August 2, 1974, to a prison term of one to four years. Began term September 3, 1974. Released January 8, 1975, pursuant to order reducing sentence to time served.

John D. Ehrlichman

Indicted on March 1, 1974, on one count of conspiracy to obstruct justice (18 USC Section 371), one count of obstruction of justice (18 USC Section 1503), one count of making false statements to agents of the FBI (18 USC Section 1001) and two counts of making a false statement to a Grand Jury (18 USC Section 1623). Pleaded not guilty March 9, 1974. Section 1001 count dismissed by judge. Found guilty on all other counts January 1, 1975. Sentenced February 21, 1975 to serve 2½ to 8 years in prison. Conviction under appeal.

Harry R. Haldeman

Indicted on March 1, 1974, on one count of conspiracy to obstruct justice (18 USC Section 371), one count of obstruction of justice (18 USC Section 1503) and three counts of perjury (18 USC Sec-

tion 1621). Pleaded not guilty March 9, 1974. Found guilty on all counts January 1, 1975. Sentenced February 21, 1975, to serve 2½ to 8 years in prison. Conviction under appeal.

Fred C. LaRue

Pleaded guilty on June 28, 1973, to an information charging one count of violation of 18 USC Section 371, conspiracy to obstruct justice. Sentenced to serve one to three years in prison, all but six months suspended. Sentence reduced by court to six months total. Entered prison April 1, 1975. Released August 15, 1975.

Jeb S. Magruder

Pleaded guilty on August 16, 1973, to an information charging one count of violation of 18 USC Section 371, conspiracy to unlawfully intercept wire and oral communications, to obstruct justice and to defraud the United States. Sentenced on May 21, 1974, to a prison term of 10 months to four years. Began term June 4, 1974. Released January 8, 1975, pursuant to order reducing sentence to time served.

Robert Mardian

Indicted on March 1, 1974, on one count of conspiracy to obstruct justice (18 USC Section 371). Pleaded not guilty March 9, 1974. Found guilty January 1, 1975. Sentenced February 21, 1975 to serve 10 months to three years in prison. Conviction under appeal.

John Mitchell

Indicted on March 1, 1974, on one count of conspiracy to obstruct justice (18 USC Section 371), one count of obstruction of justice (18 USC Section 1503), two counts of making a false statement to a Grand Jury (18 USC Section 1623), one count of perjury (18 USC Section 1621), and one count of making a false statement to an agent of the FBI (18 USC Section 1001). Section 1001 count was dismissed by judge. Pleaded not guilty March 9, 1974. Found guilty on all other counts January 1, 1975. Sentenced February 21, 1975 to serve 2½ to 8 years in prison. Conviction under appeal.

Kenneth W. Parkinson

Indicted on March 1, 1974, on one count of conspiracy to obstruct justice (18 USC Section 371) and one count of obstruction of justice (18 USC Section 1503). Pleaded not guilty March 9, 1974. Acquitted January 1, 1975.

Herbert L. Porter

Pleaded guilty on January 28, 1974, to an information charging a one-count violation of 18 USC Section 1001, making false statements to agents of the FBI. Information had been filed January 21, 1974. Sentenced on April 11, 1974, to a minimum of five months and maximum of 15 months in prison, all but 30 days suspended. Served April 22 to May 17, 1974.

Gordon Strachan

Indicted on March 1, 1974, on one count of conspiracy to obstruct justice (18 USC Section 371), one count of obstruction of justice (18 USC Section 1503), and one count of making a false statement to a Grand Jury (18 USC Section 1623). Pleaded not guilty March 9, 1974. Case severed September 30, 1974. Charges dismissed on motion of Special Prosecutor March 10, 1975.

Fielding Break-in

The following have been charged with offenses stemming from the September 3-4, 1971, break-in at the Los Angeles office of Dr. Lewis Fielding.

Bernard L. Barker

Indicted on March 7, 1974, on one count of conspiracy to violate civil rights (18 USC Section 241). Pleaded not guilty March 14, 1974. Found guilty July 12, 1974. Suspended sentence. Three years probation. Conviction under appeal.

Charles W. Colson

Indicted on March 7, 1974, on one count of conspiracy to violate civil rights (18 USC Section 241). Indictment dismissed after Colson pleaded guilty on June 3, 1974, to an information charging one count of obstruction of justice (18 USC Section 1503). Sentenced June 21, 1974 to serve one to three years in prison and fined \$5,000. Term started July 8, 1974. Released January 31, 1975, pursuant to order reducing sentence to time served.

Felipe De Diego

Indicted on March 7, 1974, on one count of conspiracy to violate civil rights (18 USC Section 241). Pleaded not guilty March 14, 1974. Indictment dismissed by judge on May 22, 1974. U.S. Court of Appeals overturned dismissal on April 16, 1975. Charges dismissed on motion of Special Prosecutor May 19, 1975.

John D. Ehrlichman

Indicted on March 7, 1974, on one count of conspiracy to violate civil rights (18 USC Section 241), one count of making a false statement to agents of the FBI (18 USC Section 1001), and three counts of making a false statement to a Grand Jury (18 USC Section 1623). Pleaded not guilty on March 9, 1974. On July 12, 1974, Ehrlichman was found guilty on all charges, except one of the counts of making a false statement to a Grand Jury. On July 22, Judge Gerhard Gesell entered an acquittal on the Section 1001 charge. On July 31, 1974, he was sentenced to concurrent prison terms of 20 months to five years. Conviction under appeal.

Egil Krogh, Jr.

Indicted on October 11, 1973, on two counts of violation of 18 USC Section 1623, making a false statement to a Grand Jury. Pleaded not guilty October 18, 1973. Indictment dismissed January 24, 1974, after Krogh pleaded guilty on November 30, 1973, to an information charging one count of violation of 18 USC Section 241, conspiracy to violate civil rights. Sentenced on January 24, 1974, to a prison term of two to six years, all but six months suspended. Began sentence February 4, 1974. Released June 21, 1974.

G. Gordon Liddy

Indicted on March 7, 1974, on one count of conspiracy to violate civil rights (18 USC Section 241). Pleaded not guilty March 14, 1974. Found guilty July 12, 1974. Sentenced July 31, 1974, to a prison term of one to three years, sentence to run concurrently with sentence in U.S. v. Liddy et al. Released on bail October 15, 1974, pending appeal, after serving twenty-one months. Bail revoked January 13, 1975. (See U.S. v. Liddy et al. p. 163 and 164). Conviction under appeal.

Eugenio Martinez

Indicted on March 7, 1974, on one count of conspiracy to violate civil rights (18 USC Section 241). Pleaded not guilty March 14, 1974. Found guilty July 12, 1974. Received a suspended sentence and three years probation on July 31, 1974. Conviction under appeal.

Campaign Activities and Related Matters

The following individuals entered pleas of guilty to misdemeanor non-willful violations of 18 USC Section 610, the federal statute prohibiting corporate campaign contributions:

Raymond Abendroth	October 23, 1974	\$2,000 fine ¹
Time Oil Corp.		
James Allen	May 1, 1974	\$1,000 fine
Northrop Corp.		
Richard L. Allison	May 17, 1974	\$1,000 fine ²
Lehigh Valley Co-operative Farmers		
Orin E. Atkins	November 13, 1973	\$1,000 fine ³
Ashland Petroleum		
Gabon, Inc.		
Russell De Young	October 17, 1973	\$1,000 fine
Goodyear Tire and Rubber Co.		
Ray Dubrownin	March 7, 1974	\$1,000 fine
Diamond International Corp.		
Harry Heltzer	October 17, 1973	\$500 fine
Minnesota Mining and Manufacturing Co.		
Charles N. Huseman	December 3, 1974	\$1,000 fine
HMS Electric Corp.		
William W. Keeler	December 4, 1973	\$1,000 fine
Phillips Petroleum Co.		
Harding L. Lawrence	November 13, 1973	\$1,000 fine
Braniff Airways		
William Lyles, Sr.	September 17, 1974	\$2,000 fine ¹
LBC & W, Inc.		
H. Everett Olson	December 19, 1973	\$1,000 fine
Carnation Co.		
Claude C. Wild, Jr.	November 13, 1973	\$1,000 fine
Gulf Oil Corp.		
Harry Ratrie	January 28, 1975	Suspended sentence
Ratrie, Robbins and Schweitzer, Inc.		
Augustus Robbins, III	January 28, 1975	Suspended sentence
Ratrie, Robbins and Schweitzer, Inc.		

¹ Charged with two counts.

² Fine suspended.

³ Pleaded no contest to charges.

The following individuals entered pleas of guilty to misdemeanor non-willful violations of 18 USC Sections 2 and 610, aiding and abetting an illegal campaign contributions:

Francis X. Carroll	May 28, 1974	Suspended sentence
Norman Sherman	August 12, 1974	\$500 fine
John Valentine	August 12, 1974	\$500 fine

The following corporations entered pleas of guilty to violations of 18 U.S.C. Section 610, illegal campaign contributions:

American Airlines	October 17, 1973	\$5,000 fine
Ashland Oil, Inc.	December 30, 1974	\$25,000 fine ⁴
Ashland Petroleum Gabon, Inc.	November 13, 1973	\$5,000 fine
Braniff Airways	November 12, 1973	\$5,000 fine
Carnation Company	December 19, 1973	\$5,000 fine
Diamond International Corp.	March 7, 1974	\$5,000 fine
Goodyear Tire and Rubber Company.	October 17, 1973	\$5,000 fine
Greyhound Corp.	October 8, 1974	\$5,000 fine
Gulf Oil Corp.	November 13, 1973	\$5,000 fine
Lehigh Valley Co-operative Farmers.	May 6, 1974	\$5,000 fine
Minnesota Mining and Manufacturing Co.	October 17, 1973	\$3,000 fine
National By-Products, Inc.	June 24, 1974	\$1,000 fine
Phillips Petroleum Co.	December 4, 1973	\$5,000 fine
Time Oil Corp.	October 23, 1974	\$5,000 fine ⁵
Ratrie, Robbins and Schweitzer, Inc.	January 28, 1975	\$2,500 fine

The following corporations entered pleas of guilty to violations of 18 U.S.C. Section 611, illegal campaign contributions by government contractor:

LBC & W, Inc.	September 17, 1974	\$5,000 fine
Northrop Corporation	May 1, 1974	\$5,000 fine

The following individual and corporation entered pleas of not guilty to an information filed October 19, 1973, charging four counts of misdemeanor non-willful violation of 18 U.S.C. Section 610, illegal campaign contribution. Both were acquitted on July 12, 1974, by a U.S. District Court judge in Minneapolis, Minnesota:

Dwayne O. Andreas
Chairman of the Board, First Interceanic Corp.
First Interceanic Corp.

⁴ Charged with five counts.

⁵ Charged with two counts.

The following related campaign contribution matters were under the jurisdiction of the Watergate Special Prosecution Force:

American Ship Building Company

Pleaded guilty August 23, 1974, to one count of conspiracy (18 USC Section 371) and one count of violation of 18 USC Section 610, illegal campaign contribution. Fined \$20,000. Charges were filed April 5, 1974.

Associated Milk Producers, Inc.

Pleaded guilty on August 1, 1974, to one count of conspiracy (18 USC Section 371) and five counts of violation of 18 USC Section 610, illegal campaign contribution. Fined \$35,000.

Tim M. Babcock

Pleaded guilty on December 10, 1974, to an information charging a one-count violation of 2 USC Section 440, making a contribution in the name of another person. Sentenced to one year in prison and fined \$1,000, with all but four months of the prison sentence suspended. Sentence under appeal.

Jack L. Chestnut

Indicted December 23, 1974, on one count of willful violation of 18 USC Section 610, aiding and abetting an illegal campaign contribution. Pleaded not guilty January 6, 1975. Found guilty May 8, 1975, after jury trial by Office of U.S. Attorney for Southern District of New York. Sentenced June 26, 1975, to serve four months in prison and fined \$5,000. Conviction under appeal.

John B. Connally

Indicted on July 29, 1974, on two counts of accepting an illegal payment (18 USC Section 201 [g]), one count of conspiracy to commit perjury and obstruct justice (18 USC Section 371) and two counts of making a false statement to a Grand Jury (18 USC Section 1623). Pleaded not guilty August 9, 1974. Judge severs last three counts for separate trial. Found not guilty on first two counts April 17, 1975. Remaining counts dismissed April 18, 1975, on motion of Special Prosecutor.

Harry S. Dent, Sr.

Pleaded guilty on December 11, 1974, to an information charging a one count violation of the Federal Corrupt Practices Act (2 USC Sections 242 and 252). Sentenced to one month unsupervised probation.

DKI for '74

Pleaded guilty on December 13, 1974, to an information charging a violation of 2 USC Sections 434 [a] and [b], and 441, failure to report receipt of contributions and failure to report names, addresses, occupations and principal places of business of the persons making such contributions. Suspended sentence.

Jack A. Gleason

Pleaded guilty on November 15, 1974, to an information charging a one-count violation of the Federal Corrupt Practices Act, (2 USC Section 252). Suspended sentence.

Jake Jacobsen

Indicted on February 21, 1974, on one count of violation of 18 USC Section 1623, making a false statement to a Grand Jury. In-

dictment dismissed by Chief Judge George L. Hart May 3, 1974. Indicted July 29, 1974, on one count of making an illegal payment to a public official (18 USC Section 201[f]). Pleaded guilty August 7, 1974. Sentencing deferred.

Thomas V. Jones

Pleaded guilty on May 1, 1974, to an information charging a one-count violation of 18 USC Sections 2 and 611, willfully aiding and abetting a firm to commit violation of statute prohibiting campaign contributions by government contractors. Fined \$5,000

Herbert W. Kalmbach

Pleaded guilty on February 25, 1974, to a one-count violation of the Federal Corrupt Practices Act, (2 USC Sections 242[a] and 252[b]), and one count of promising federal employment as a reward for political activity and support of a candidate (18 USC Section 600). Sentenced to serve six to eighteen months in prison and fined \$10,000 on the first charge. On the second charge, Kalmbach was sentenced to serve six months in prison, sentence to run concurrent with other sentence. Began term July 1, 1974. Released January 8, 1975. Sentence modified to time served.

John H. Melcher, Jr.

Pleaded guilty April 11, 1974, to an information charging a one-count violation of 18 USC Sections 3 and 610, being an accessory after the fact to an illegal corporate campaign contribution. Fined \$2,500.

Harold S. Nelson, former general mgr., Associated Milk Producers, Inc. Pleaded guilty on July 31, 1974, to a one-count information charging conspiracy to violate 18 USC Section 201 [f], (illegal payment to government official), and 18 USC Section 610, (illegal campaign contribution) 18 USC Section 371. Sentenced November 1, 1974, to serve four months in prison and fined \$10,000. Term began November 8, 1974. Released February 21, 1975.

David L. Parr, former special counsel, Associated Milk Producers, Inc. Pleaded guilty on July 23, 1974, to a one-count information charging conspiracy to violate 18 USC Section 610, illegal campaign contribution. Sentenced November 1, 1974, to serve four months in prison and fined \$10,000. Term began November 8, 1974. Released February 21, 1975.

Stuart H. Russell

Indicted December 19, 1974, on one count of conspiracy to violate 18 USC Section 610, illegal campaign contribution (18 USC Section 371), two counts of aiding and abetting a willful violation of 18 USC Section 610, illegal campaign contribution (18 USC Sections 2 and 610). Pleaded not guilty. Found guilty in San Antonio, Texas, July 11, 1975. Sentenced in August 1975, to a prison term of two years. Conviction under appeal.

Maurice Stans

Pleaded guilty March 12, 1975, to three counts of violation of the reporting sections of the Federal Election Campaign Act of 1971, 2 USC Sections 434[a] and [b], 441; and two counts of violation of 18 USC Section 610, accepting an illegal campaign contribution. Fined \$5,000 on May 14, 1975.

George M. Steinbrenner III, Chairman of the Board, American Ship Building Co.

Indicted April 5, 1974, on one count of conspiracy (18 USC Section 371); five counts of willful violation of 18 USC Section 610, illegal campaign contribution; two counts of aiding and abetting an individual to make a false statement to agents of the FBI (18 USC Sections 2 and 1001), four counts of obstruction of justice (18 USC Section 1503); and two counts of obstruction of a criminal investigation (18 USC Section 1510). Pleaded not guilty April 19, 1974.

On August 23, 1974, Steinbrenner pleaded guilty to the count of the indictment charging a violation of 18 USC Section 371, conspiracy to violate 18 USC Section 610, and an information charging one count of violation of 18 USC Sections 3 and 610, being an accessory after the fact to an illegal campaign contribution. He was fined \$15,000 on August 30, 1974. The remaining counts of the indictment were dismissed.

Wendell Wyatt

Pleaded guilty on June 11, 1975, to a one-count information charging violation of the reporting provisions of the Federal Election Campaign Act (18 USC Section 2[b] and 2 USC Sections 434[a] and [b] and 441). Fined \$750 on July 18, 1975.

Dirty Tricks, ITT and Other Matters

Dwight L. Chapin

Indicted on November 29, 1973, on four counts of violation of 18 USC Section 1623, making a false statement to a Grand Jury. He pleaded not guilty December 7, 1973. One count was dismissed by judge at conclusion of prosecution case. Found guilty on two of three remaining counts on April 5, 1974. Sentenced May 15, 1974, to serve 10 to 30 months in prison. Began serving sentence August 10, 1975. Conviction upheld by U.S. Court of Appeals July 14, 1975. Certiorari petition pending.

Richard G. Kleindienst

Pleaded guilty on May 16, 1974, to an information charging a one-count violation of 2 USC Section 192, refusal to answer pertinent questions before a Senate Committee. Sentenced June 7, 1974, to a prison term of 30 days and fined \$100. Sentence suspended.

George A. Hearing⁶

Indicted by federal grand jury in Orlando, Fla., May 4, 1973, on two counts of fabricating and distributing illegal campaign literature (18 USC Section 612). Pleaded guilty May 11, 1973. Sentenced to a prison term of one year on June 15, 1973. Released March 22, 1974.

Edward L. Morgan

Pleaded guilty November 8, 1974, to an information charging one count of conspiracy to impair, impede, defeat and obstruct

⁶ Matter not under jurisdiction of Special Prosecutor.

the proper and lawful governmental functions of the Internal Revenue Service (18 USC Section 371). Sentenced to serve two years in prison, all but four months suspended. Began term January 6, 1975. Released April 23, 1975.

Howard E. Reinecke

Indicted April 3, 1974, on three counts of perjury (18 USC Section 1621). One count dropped by government on July 9, 1974; one count dismissed by judge at conclusion of government's case on July 22, 1974. Found guilty on remaining count July 27, 1974. Received suspended 18-month sentence on October 2, 1974. Conviction under appeal.

Donald H. Segretti

Indicted May 4, 1973, in Orlando, Fla., on two counts of distribution of illegal campaign literature (18 USC Sections 612 and 371). Pleaded not guilty. Indictment superceded by an August 24, 1973, indictment unsealed September 17, 1973. The new indictment charged four counts of conspiracy (18 USC Section 371) and three counts of distribution of illegal campaign literature (18 USC Section 612). Pleaded guilty October 1, 1973, to last three counts. Sentenced November 5, 1973 to serve six months in prison. Began term on November 12, 1973. Released March 25, 1974.

G. Gordon Liddy

Indicted March 7, 1974, on two counts of refusal to testify or produce papers before Congressional Committee (2 USC Section 192). Pleaded not guilty March 14, 1974. Found guilty on both counts May 10, 1974. Suspended six-month sentence.

Frank DeMarco, Jr.

Indicted February 19, 1975, on one count of conspiracy to defraud the United States and an agency thereof by impairing, impeding, defeating and obstructing the proper and lawful governmental functions of the Internal Revenue Service (18 USC Section 371); one count of making a false statement to agents of the Internal Revenue Service (18 USC Section 1001); and one count of obstruction of an inquiry before a Congressional Committee (18 USC Section 1505). Indicted July 29, 1975, on one charge of making a false statement to agents of the Internal Revenue Service (18 USC Section 1001). Defendant pleaded not guilty to all charges. Judge orders case transferred from Washington, D.C. Trial set for September 18, 1975, in Los Angeles.

Ralph G. Newman

Indicted February 19, 1975, on one count of conspiracy to defraud the United States and an agency thereof by impairing, impeding, defeating and obstructing the proper and lawful governmental functions of the Internal Revenue Service (18 USC Section 371); and one count of aiding and assisting in the preparation of a false document filed with a federal income tax return (26 USC Section 7206[2]). Judge orders case transferred from Washington, D.C. Indicted August 15, 1975, on one count of submitting a false document to agents of the Internal Revenue Service (18 USC Section 1001). Trial set for October 28, 1975, in Chicago.

Original Watergate Defendants⁷

Bernard L. Barker

Indicted September 15, 1972, on seven counts of conspiracy, burglary, wiretapping and unlawful possession of intercepting devices (one count of 18 USC Section 371, two counts of 22 DC Code Section 1801[b], two counts of 18 USC Section 2511, two counts of 23 DC Code 543[a]). Pleaded guilty January 15, 1973. Sentenced November 9, 1973, to a prison term of 18 months to six years. Motion to withdraw guilty plea denied. Freed January 4, 1974, pending outcome of appeal. Appeal denied February 25, 1975. Sentence reduced by Judge John J. Sirica to time served.

Virgilio Gonzalez

Indicted September 15, 1972, on seven counts of conspiracy, burglary, wiretapping and unlawful possession of intercepting devices (one count of 18 USC Section 371, two counts of 22 DC Code Section 1801[b], two counts of 18 USC Section 2511, two counts of 23 DC Code 543[a]). Pleaded guilty January 15, 1973. Sentenced November 9, 1973, to a prison term of one to four years. Motion to withdraw guilty plea denied. Released on parole March 7, 1974. Appeal denied February 25, 1975.

E. Howard Hunt

Indicted September 15, 1972, on six counts of conspiracy, burglary, and wiretapping (one count of 18 USC Section 371, two counts of 22 DC Code Section 1801[b], three counts of 18 USC Section 2511). Pleaded guilty January 11, 1973. Sentenced November 9, 1973, to a prison term of 30 months to eight years and fined \$10,000. Motion to withdraw guilty plea denied. Released on personal recognizance January 2, 1974, pending outcome of appeal. Appeal denied February 25, 1975. Re-entered prison on April 25, 1975.

G. Gordon Liddy

Indicted September 15, 1972, on six counts of conspiracy, burglary, and wiretapping (one count of 18 USC Section 371, two counts of 22 DC Code Section 1801[b], three counts of 18 USC Section 2511). Convicted January 30, 1973, on all counts. Sentenced March 23, 1973, to a prison term of six years and eight months to 20 years and fined \$40,000. Released on bail October 15, 1974. Appeal denied. Re-entered prison February 16, 1975.

Eugenio R. Martinez

Indicted September 15, 1972, on seven counts of conspiracy, burglary, wiretapping and unlawful possession of intercepting devices (one count of 18 USC, Section 371, two counts of 22 DC Code Section 1801[b], two counts of 23 DC Code 543[a], two counts of 18 USC Section 2511). Pleaded guilty January 15, 1973. Sentenced November 9, 1973, to a prison term of one to four years. Motion to withdraw guilty plea denied. Released on parole March 7, 1974. Appeal denied February 25, 1975.

James W. McCord, Jr.

Indicted on September 15, 1972, on eight counts of conspiracy, burglary, wiretapping and unlawful possession of intercepting

⁷ This case was prosecuted by the Office of the United States Attorney for the District of Columbia, and then WSPF performed the appellate work.

devices (one count of 18 USC Section 371, two counts of 22 DC Code Section 1801[b], three counts of 18 USC Section 2511, two counts of 23 DC Code Section 543[a]). Convicted January 30, 1973. Sentenced November 9, 1973, to a prison term of one to five years. Conviction upheld by U.S. Court of Appeals. Entered prison on March 21, 1975. Released May 29, 1975, pursuant to order reducing sentence to time served.

Frank A. Sturgis

Indicted September 15, 1972, on seven counts of conspiracy, burglary, wiretapping and unlawful possession of intercepting devices (one count of 18 USC Section 371, two counts of 22 DC Code Section 1801[b], two counts of 18 USC Section 2511, two counts of 23 DC Code Section 543[a]). Pleaded guilty January 15, 1973. Sentenced November 9, 1973, to a prison term of one to four years. Motion to withdraw guilty plea denied. Released by court order on January 18, 1974, pending outcome of appeal. Parole Board announced on March 25, 1974, that parole would commence on termination of appeal bond. Appeal denied February 25, 1975.

Mitchell-Stans Trial in New York

The following indictments were handed up by a federal grand jury in New York on May 10, 1973, some two weeks before the Watergate Special Prosecution Force began its operations. Although technically under the jurisdiction of the Special Prosecutor, the cases were tried by the office of the U.S. Attorney for the Southern District of New York.

John Mitchell

Indicted on May 10, 1973, on one count of conspiracy to obstruct justice (18 USC Section 371); three counts of endeavoring to obstruct justice (18 USC Sections 1503, 1505, 1510, and 2); six counts of making a false statement before a Grand Jury (18 USC Section 1623). Pleaded not guilty May 21, 1973. Acquitted April 28, 1974.

Maurice Stans

Indicted on May 10, 1973, on one count of conspiracy (18 USC Section 371); three counts of endeavoring to obstruct justice (18 USC Sections 1503, 1505, 1510 and 2); and six counts of making a false statement to a Grand Jury (18 USC Section 1623). Pleaded not guilty May 21, 1973. Acquitted April 28, 1974.

Robert Vesco

Indicted on May 10, 1973, on one count of conspiracy to obstruct justice (18 USC Section 371); and three counts of endeavoring to obstruct justice (18 USC Sections 1503, 1505, 1510, and 2). Presently a fugitive, living outside the United States. Charges pending.

Harry Sears

Indicted on May 10, 1973, on one count of conspiracy to obstruct justice (18 USC Section 371); and three counts of endeavoring to obstruct justice (18 USC Sections 1503, 1505, 1510 and 2). Granted

immunity from prosecution in return for testimony at trial. Charges dismissed March 17, 1975.

APPELLATE AND OTHER ACTIONS

Watergate Break-in

1. *United States v. James W. McCord, Jr.* (U.S.C.A. D.C. Cir. 73-2252)
 2. *United States v. G. Gordon Liddy* (U.S.C.A. D.C. Cir. 73-1565)
 3. *United States v. E. Howard Hunt, Jr.* (U.S.C.A. D.C. Cir. 73-2199)
 4. *United States v. Bernard L. Barker* (U.S.C.A. D.C. Cir. 73-2185)
 5. *United States v. Eugenio R. Martinez* (U.S.C.A. D.C. Cir. 73-2186)
 6. *United States v. Frank A. Sturgis* (U.S.C.A. D.C. Cir. 73-2187)
 7. *United States v. Virgilio Gonzalez* (U.S.C.A. D.C. Cir. 73-2188)
- Convictions of original Watergate defendants upheld by U.S. Court of Appeals. See *United States v. Liddy*, 509 F. 2d 482 (1974); *United States v. McCord*, 509 F. 2d 334 (1974); *United States v. Barker*, 514 F. 2d 208 (1975); *United States v. Hunt*, 514 F. 2d 270 (1975). McCord and Liddy appealed convictions after trial by jury. Others appealed denial of motions to withdraw pleas of guilty.

Petitions for writs of certiorari filed in the Supreme Court by Liddy (Sup. Ct. 74-5678), McCord (Sup. Ct. 74-988), and Barker (Sup. Ct. 74-6308) were denied on January 27, 1975, April 21, 1975, and June 9, 1975, respectively.

* * * * *

8. *United States v. George Gordon Liddy* (U.S.C.A. D.C. Cir. No. 73-1564)

9. *In Re Grand Jury Proceedings, George Gordon Liddy* (U.S.C.A. D.C. Cir. No. 73-1562)

Liddy, who had been sentenced for his conviction in the break-in of the Democratic National Committee, was adjudged in civil contempt for refusing to testify before a grand jury after being granted immunity. He was ordered confined, and execution of sentence in the criminal case was suspended during his confinement for civil contempt. On October 10 and December 12, 1974, the Court of Appeals affirmed the action of the District Court. See *United States v. Liddy*, 506 F. 2d 1293 (1974) and 510 F. 2d 669 (1974). Liddy's petition for writ of certiorari filed in the Supreme Court (Sup. Ct. 74-5828) was denied on March 17, 1975.

* * * * *

10. *United States v. George Gordon Liddy* (U.S.C.A. D.C. Cir. No. 73-1753)

Appeal from district judge's denial of motion to reduce sentence pending.

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Watergate Cover-up

1. *In Re Application of United States Senate Select Committee on Presidential Campaign Activities* (U.S.D.C. D.C. Misc. No. 70-73) Senate Select Committee applied for use immunity for Jeb Stuart

- Magruder and John W. Dean III pursuant to 18 U.S.C. §§ 6001, 6005 on May 19, 1973. Special Prosecutor sought an order requiring the immunized witness to testify before the Committee in executive session in order to prevent pre-trial publicity. Court granted the immunity orders without condition on June 12, 1973.
2. *Haldeman v. Sirica* (U.S.C.A. D.C. Cir. No. 74-1364), 501 F. 2d 714 (1974).
3. *Strachan v. Sirica* (U.S.C.A. D.C. Cir. No. 74-1368)
Petition for a writ of mandamus to prohibit transfer of Grand Jury report to the House Judiciary Committee investigation into possible impeachment of President Nixon denied on March 21, 1974.
4. *Mitchell, et al. v. Sirica* (U.S.C.A. D.C. Cir. No. 74-1492), 502 F. 2d 373 (1974).
Petition for a writ of mandamus to recuse Judge Sirica denied on June 7, 1974.
5. *Mitchell, et al. v. Sirica* (Sup. Ct. No. 73-2001)
Petition for a writ of certiorari to review above ruling concerning recusal of Judge Sirica denied on July 25, 1974.
6. *Haldeman v. Sirica* (U.S.C.A. D.C. Cir. No. 74-1727)
Petition for a writ of mandamus challenging validity of grand jury extension act and seeking dismissal of the indictment denied on August 14, 1974.
7. *Haldeman v. Sirica* (Sup. Ct. No. 74-236)
Petition for a writ of certiorari to review denial of mandamus relating to grand jury extension denied on November 11, 1974.
8. *Ehrlichman v. Sirica* (U.S.C.A. D.C. Cir. No. 74-1826)
Haldeman v. Sirica (U.S.C.A. D.C. Cir. No. 74-1826)
Petition for a writ of mandamus or prohibition seeking a continuance of the case. The Court suggested a 3-4 week continuance as appropriate for further trial preparation on August 22, 1974.
9. *Ehrlichman v. Sirica* (Sup. Ct. No. A-93), 419 U.S. 1310 (1974).
Application for a stay of trial pending consideration of petition for a writ of mandamus or prohibition denied on September 2, 1974.
10. *Strachan v. Sirica* (U.S.C.A. D.C. Cir. No. 74-1868)
Petition for a writ of mandamus filed under seal seeking dismissal of indictment on grounds of immunity denied on September 20, 1974.
11. *Mitchell v. Sirica* (U.S.C.A. D.C. Cir. No. 74-1878)
12. *Ehrlichman v. Sirica* (U.S.C.A. D.C. Cir. No. 74-1876)
Petitions for writs of mandamus seeking an indefinite postponement of the trial denied on September 20, 1974.
13. *Mitchell & Haldeman v. Sirica* (Sup. Ct. No. A-217)
Application for a stay of the trial pending petition for a writ of certiorari from denial of petition for writ of mandamus or prohibition denied on September 27, 1974.
14. *Mitchell, Haldeman, Ehrlichman, Mardian & Parkinson v. Sirica* (U.S.C.A. D.C. Cir. No. 74-1949)
Petition for a writ of prohibition seeking to alter trial judge's procedures for exercising peremptory challenges of prospective jurors denied on October 11, 1974.
15. *United States v. Haldeman* (U.S.C.A. D.C. Cir. No. 75-1381)
United States v. Ehrlichman (U.S.C.A. D.C. Cir. No. 75-1382)

United States v. Mardian (U.S.C.A. D.C. Cir. No. 75-1383)
United States v. Mitchell (U.S.C.A. D.C. Cir. No. 75-1384)
Appeals from convictions in *United States v. Mitchell* pending.

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Fielding Break-in

1. *United States v. De Diego* (U.S.C.A. D.C. Cir. No. 74-1769), 511 F. 2d 818 (1975). Dismissal of charges against Felipe De Diego reversed; case remanded for hearing.
2. *United States v. John D. Ehrlichman* (U.S.C.A. D.C. Cir. No. 74-1882)
3. *United States v. Bernard L. Barker* (U.S.C.A. D.C. Cir. No. 74-1883)
4. *United States v. Eugenio Martinez* (U.S.C.A. D.C. Cir. No. 74-1884)
5. *United States v. G. Gordon Liddy* (U.S.C.A. D.C. Cir. No. 74-1885) Defendants' appeals of convictions pending.
6. *United States v. John D. Ehrlichman* (U.S.C.A. D.C. Cir. No. 74-1921) Government's appeal of trial judge's setting aside of the jury's verdict on one count of the indictment (18 U.S.C. § 1001) voluntarily dismissed by the government.

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Subpoenas for Presidential Tape Recordings

1. *In Re Grand Jury Subpoena Duces Tecom Issued to Richard M. Nixon or any Subordinate Officer, Official or Employee with Custody or Control of Certain Documents or Objects. Richard M. Nixon, Appellant* (U.S.D.C. D.C. Misc. No. 47-73), 360 F. Supp. 1 (1973) On August 29, 1973, Chief Judge John Sirica enforced a grand jury subpoena to Richard M. Nixon for nine Presidential recordings. After the ruling was upheld, hearings were conducted concerning two missing conversations and an 18½ minute gap on a third tape.
2. *Nixon v. Sirica* (U.S.C.A. D.C. Cir. No. 73-1962), 487 F. 2d 700 (1973).
3. *United States v. Sirica* (U.S.C.A. D.C. Cir. No. 73-1967) Cross-petitions for writs of mandamus to review order enforcing grand jury subpoena. Order of district court, with modifications upheld on October 12, 1973.
4. *Nixon v. Sirica* (U.S.C.A. D.C. Cir. Nos. 74-1618, 74-1753) Appeal and petition for mandamus to review Judge Sirica's order of June 12, 1974, reconsidering earlier ruling that the final portion of the September 15, 1972, Nixon-Haldeman-Dean conversation, subpoenaed by the grand jury, was subject to a valid claim of privilege. On August 6, 1974, the appellant moved for voluntary dismissal which was granted on August 7.
5. *United States v. Nixon* (Sup. Ct. No. 73-1766), 418 U.S. 683 (1974)
Nixon v. United States (Sup. Ct. No. 73-1834)

Petition and cross petition for writ of certiorari before judgment to review Judge Sirica's May 20, 1974, order enforcing Special Prosecutor's trial subpoena for 64 Presidential tape recordings issued April 16, 1974. Writs were granted on May 31, 1974; arguments were heard July 8, 1974; and a unanimous Court upheld the lower court order on July 24, 1974. (See *United States v. Mitchell*, 377 F. Supp. 1326 (1974).)

Nixon Tapes and Documents

1. *Nixon v. Sampson* (U.S.D.C. D.C. Civil No. 74-1518)
2. *Reporters Committee for Freedom of the Press v. Sampson* (U.S.D.C. D.C. Civil No. 74-1533)
3. *Lillian Hellman v. Sampson* (U.S.D.C. D.C. Civil No. 74-1551)
Consolidated suits seeking enforcement of and challenging agreement relating to custody of tapes and documents compiled during the Nixon Administration.
4. *Nixon v. Richey* (U.S.C.A. D.C. Cir. No. 75-1063), 513 F. 2d 427 (1975), 513 F. 2d 430 (1975)
Petition for writ of mandamus granted staying effectiveness of district judge's decision in *Nixon v. Sampson*.
5. *Richard M. Nixon v. Administrator, General Services Administration* (U.S.D.C. D.C. Civil No. 74-1852)
Suit challenging the constitutionality of the Presidential Recordings and Materials Preservation Act concerning the custody and disposition of tapes and documents compiled during the Nixon Administration.

Miscellaneous Appellate Proceedings

1. *Howard Edwin Reinecke v. Parker* (U.S.C.A. D.C. Cir. No. 74-1533)
Petition for a writ of mandamus seeking transfer of plaintiff's case to U.S. District Court for the Northern District of California denied on June, 1974.
2. *United States v. Dwight L. Chapin* (U.S.D.C. D.C. Cir. No. 74-1648), 515 F. 2d 1274 (1975)
Conviction affirmed. Petition for a writ of certiorari in the Supreme Court pending.
3. *United States v. Howard Edwin Reinecke* (U.S.C.A. D.C. Cir. No. 74-2068)
Appeal of criminal conviction pending.
4. *United States v. Hon. Robert Hill, U.S. District Judge* (U.S.C.A. Fifth Cir. No. 74-3738)
United States v. Ray Cowan and Jake Jacobsen, Defendants, and Wayne O. Woodruff, et al., Special Prosecutors, Appellees (U.S.C.A. Fifth Cir. No. 74-3941)
Appeals from the appointment of a special prosecutor by district judge after the government agreed to dispose of pending federal charges against Jacobsen upon his agreement to plead guilty to a charge in U.S. District Court for the District of Columbia. Petition for mandamus filed November 22, 1974. Both actions pending.

5. *United States v. Gasch* (U.S.C.A. D.C. Cir. No. 75-1452)
Petition for writ of mandamus to set aside order of district judge transferring trials of Frank DeMarco and Ralph Newman to the Central District of California and the Northern District of Illinois, respectively, denied.
6. *United States v. Tim M. Babcock* (U.S.C.A. D.C. Cir. No. 74-1285)
Appeal challenging judge's authority to impose prison sentence under 2 U.S.C. § 441 for misdemeanor violation.

Miscellaneous District Court Proceedings

Numerous grand jury matters were litigated before the Chief Judge of the District Court, including motions to quash subpoenas and claims of privilege. In addition, the Special Prosecutor on several occasions moved for authority under Rule 6(e) of the Federal Rules of Criminal Procedure to make grand jury materials available to other government agencies and bar associations, when those materials were relevant to matters within their jurisdictions. Finally, the Special Prosecutor was subject to several civil suits, including actions under the Freedom of Information Act and actions challenging the validity of the pardon granted to former President Nixon by President Ford. All of the civil suits have been dismissed by the various courts in which they were filed.

Organizational History

This appendix is a narrative of events leading up to the formation of the Special Prosecutor's office in the spring of 1973, the organization of the office, and its eventual abolition and re-establishment, all within a 5-month period.

BACKGROUND TO THE APPOINTMENT OF THE SPECIAL PROSECUTOR

By the spring of 1973 there were strong indications that "Watergate" involved more than the "third-rate burglary" described by a White House spokesman. The press had linked high officials of the Committee to Re-Elect the President with the break-in and had uncovered facts which suggested that the White House and other Federal agencies had engaged in such activities as political espionage, break-ins, obstruction of justice and irregularities in campaign financing. In short, a trail of misdeeds seemed to lead directly to the White House.

Although the President and the then Attorney General insisted that the original Watergate investigation had been exhaustive, a number of circumstances caused increasing suspicion that much more probing was necessary:

—In late February and early March, Acting FBI Director L. Patrick Gray revealed that the Bureau had investigated little other than the break-in itself and had not pursued other allegations.

—In March, one of the defendants, James McCord, wrote a letter to Judge Sirica alleging a "cover-up" of incidents surrounding the break-in. He charged that persons yet unnamed were involved in the case, that perjury had been committed at the trial of the burglars, and that political pressure had been applied to the defendants to induce them to plead guilty and remain silent.

—On April 15, Attorney General Richard Kleindienst disqualified himself from the investigation because of his close personal and professional relationship with persons under suspicion.

—On April 30, White House Press Secretary Ronald Ziegler announced the resignations of Haldeman and Ehrlichman, and the firing of Dean. In the same announcement, he revealed that Kleindienst had resigned and had been replaced by the Secretary of Defense, Elliot Richardson.

That evening, in a television address to the Nation, President Nixon said that he had given Richardson absolute authority over the Watergate case and related matters, including the authority to name a special prosecutor if he considered it appropriate to do so.

In the week that followed, several resolutions calling for the appointment of a special prosecutor were introduced in the Congress. Members of the Senate Judiciary Committee (who were about to consider Richardson's nomination as Attorney General) privately pressed him for an assurance that he would appoint a special prosecutor. Some Senators even said publicly that Richardson's confirmation would depend on such an appointment. On May 7, Richardson announced that, if confirmed, he would appoint a special prosecutor. The next day Senator Adlai Stevenson, III, introduced a resolution, cosponsored by 23 Democrats, which set forth terms designed to guarantee the independence and authority of a special prosecutor.

ESTABLISHING THE JURISDICTION, AUTHORITY AND INDEPENDENCE OF THE SPECIAL PROSECUTOR

Richardson's confirmation hearings, which began on May 9, focused on the terms in the Stevenson resolution he would guarantee and the jurisdiction he would give to the special prosecutor. As to jurisdiction, Richardson testified that he would delegate responsibility over the following:

1. All cases arising out of the 1972 Presidential election campaign, including the Watergate break-in case, the Donald Segretti case (Segretti had been charged on May 4 in Florida with fabricating and distributing a letter damaging to three Democratic presidential candidates), and violations of campaign laws;
2. Cover-up conspiracies and misuse of high Government offices;
3. The burglary of the office of the psychiatrist of antiwar activist Daniel Ellsberg; and
4. Procrastination or obfuscation by the Department of Justice, the FBI, or any other agency relating to the cover-up of these cases.

Richardson pointed out that the common denominator of the special prosecutor's jurisdiction would be allegations of involvement of White House or CRP officials, or Administration appointees. He said he intended to leave the assignment open in order to delegate matters which at the outset did not seem to be related to Watergate, but which might later prove to be so related. He added that he did

not know enough at that time about the milk fund case or the Vesco case to decide whether they should be included, and said that he would deal later with the question of delegating responsibility to investigate various other activities of the White House "Plumbers."

Richardson was equally explicit in his testimony about the authority of the special prosecutor. The special prosecutor, he stated, would have the necessary financial support to do the job and full authority to select a staff and to exercise the powers normally vested in the Assistant Attorney General in charge of the Criminal Division.¹ In the latter connection, Richardson testified that the special prosecutor would be empowered to decide what kind of relationship he would have with various U.S. Attorneys investigating matters under his jurisdiction, including the right to overrule a U.S. Attorney, to intervene at any phase of proceedings being conducted, to dismiss any indictments already brought and to bring more serious charges if he deemed it appropriate.

Richardson further stated that he intended to give the special prosecutor complete authority to challenge claims of executive privilege (including the right to seek court review)² and assertions of the right to withhold information on national security grounds. Richardson also testified that the special prosecutor would have the authority to determine if and when to seek a court order granting immunity to a witness.³

The question of the special prosecutor's "independence" was more difficult. On the one hand, Richardson assured the Committee that the special prosecutor would not be removed from office except for malfeasance or gross incompetence. On the other hand, Richardson was faced with the legal obligations which he would assume if confirmed as Attorney General. The Stevenson resolution called for the appointment of a special prosecutor with "final" authority. Richardson objected to the use of the word "final"; he felt that statutes giving the responsibility for the administration of the Department of Justice to the Attorney General required that the Attorney General retain ultimate authority. While he said he would delegate "full" authority to the special prosecutor, he took the position that he would exercise his ultimate authority only if the special prosecutor was "behaving arbitrarily or capriciously." Richardson stressed that he would not

¹ Richardson also assured the Committee that he would request the Justice Department and the FBI to detail personnel to the special prosecutor's office.

² Since the President's Counsel would represent the White House in such litigation, Richardson said he would not exercise the traditional role of the Attorney General to interpret the applicability of the doctrine of executive privilege.

³ By law (18 U.S.C. § 6003), any request by a Federal prosecutor to a court for an immunity order must be approved by the Attorney General, Deputy Attorney General or designated Assistant Attorney General. Richardson said he intended to give approval automatically to any such requests by the special prosecutor.

interpose his judgment over the special prosecutor's in such discretionary matters as whether to request a grant of immunity, whether to seek an indictment and, if so, on what charges, or whether to take the prosecutorial responsibility out of the hands of a U.S. Attorney. It was Richardson's view that he would be available to consult with the special prosecutor, that he would give whatever advice he could and would want to be kept generally informed, but that the special prosecutor would not be under any obligation to keep him informed or to seek his approval in advance of a prosecutive decision.

Richardson thought the likelihood of his intervention was so remote as to be practically inconceivable. If it occurred, he said, it would be due to arbitrary action either by the special prosecutor or himself; if the latter were true, the special prosecutor would have a duty to make the situation known immediately. Richardson further assured the Committee of his support for a full and thorough investigation and suggested that, at some subsequent stage when the special prosecutor had substantially completed his job, a panel might be created to review the whole record of the special prosecutor's activities.

SELECTION OF ARCHIBALD COX AS SPECIAL PROSECUTOR

On the first day of the hearings Richardson announced that he had consulted 80 to 100 individuals, including the presidents of the American Bar Association and the American College of Trial Lawyers, and had asked them to submit names for the position of special prosecutor. He said he would draw up a list, submit it to certain individuals for further comment and then adopt an order in which to approach the persons recommended. He asked the Judiciary Committee to invite the candidate to testify and promised that he would select another if the Committee or the full Senate, by resolution, did not approve his choice.

Richardson was asked and agreed to submit the "finalists" list to members of the Committee for their comment. He did so after narrowing the list to four persons. On May 15, he announced that the first person on the list was then examining the guidelines drawn up to describe the special prosecutor's authority and responsibilities. He told the Committee that he anticipated incorporating suggestions from the candidate and promised to let them know if the top persons turned down the job because they felt there was insufficient flexibility in the guidelines.

Later that day Richardson's first choice, U.S. District Judge Harold Tyler of New York, declined the job. He told the press he thought it would be wrong to resign his judgeship, particularly in light of the fact that the ground rules were not completely settled.

Richardson said he would confer with the remaining candidates before offering the post to anyone. The next day, Warren Christopher, a California attorney and former Deputy Attorney General of the United States, removed himself from consideration after conferring with Richardson. He announced that he had done so because he would not have been granted enough independence.

On May 17 Richardson sent the guidelines for the special prosecutor's job to the Judiciary Committee to clarify his position, as refined by the hearings and his interviews with the candidates for special prosecutor. He pledged that he would not countermand or interfere with the special prosecutor's decisions or actions and would not remove the special prosecutor except for extraordinary improprieties. He also announced that he was adding ten names to the list of candidates.

On May 18 Richardson announced that if the Senate approved his own nomination he would appoint Archibald Cox to be the Special Prosecutor. Cox was a professor of constitutional law at Harvard Law School and had served as Solicitor General of the United States. A final version of Richardson's guidelines—amended to specify that the Special Prosecutor would determine whether and to what extent he would inform or consult with the Attorney General about the conduct of his duties and responsibilities—was presented to the Committee that day. In a separate announcement Cox said he was satisfied that Richardson's guidelines would permit sufficient independence to do the job right. He said that he had studied these guidelines and was satisfied that they gave him all the formal power he needed. As further insurance, Cox agreed to keep a detailed record of his conversations with Richardson and to make a full final report of his work, including factual findings as to high Government officials. Cox said he considered that the "full" authority vested in him was, for all practical purposes, "final," and suggested that the only authority Richardson was retaining was "to give me hell if I do not do the job."

On May 23, the Senate Judiciary Committee voted unanimously to recommend the confirmation of Elliot Richardson. He was confirmed that same day by the full Senate and was sworn in as Attorney General on May 25. Several hours later Cox was sworn in as Special Prosecutor.

ORGANIZATION OF THE WATERGATE SPECIAL PROSECUTION FORCE

On May 31 Richardson issued an order establishing WSPF and setting forth the duties and responsibilities of the Special Prosecutor. He designated Cox as Director of the office and directed all divisions, offices, services and bureaus of the Department of Justice, including

the FBI and U.S. Attorneys, to cooperate with the Special Prosecutor on all matters under his jurisdiction.⁴

After Cox had familiarized himself with the factual matters falling within his purview, he met with the Attorney General and Henry Petersen, the Assistant Attorney General for the Criminal Division, to clarify which investigations that the Criminal Division had been handling were encompassed by this mandate. They decided:

—That the Special Prosecutor would be responsible for all cases arising out of the Vesco indictments already returned by the grand jury in the Southern District of New York, but that the Criminal Division, under the supervision of the Special Prosecution Force, would be responsible for the extradition of Vesco;

—That the indictment returned by the Middle District of Florida against Donald Segretti and all cases of campaign violations arising out of the activities of Segretti would be the responsibility of the Special Prosecutor;

—That the Criminal Division would prepare an inventory of all election law cases and investigations then pending with respect to the 1972 Presidential campaign and those Senatorial and Congressional campaigns arguably related to matters within the Special Prosecutor's jurisdiction; the Special Prosecutor would then designate from the inventory those matters over which he would assume total or supervisory responsibility;

—That the Special Prosecutor would be responsible for all matters relating to the burglary of the office of Daniel Ellsberg's psychiatrist;

—That allegations related to the Presidential commutation of Angelo DeCarlo's sentence (DeCarlo had been convicted of extortion) would be investigated by the Special Prosecutor;

—That the Special Prosecutor would be responsible for pursuing any criminal violations in the Department of Justice's settlement of an antitrust case against the International Telephone and Telegraph Company (ITT); this included possible perjury in testimony before the Senate Judiciary Committee relating to that settlement, and the Securities and Exchange Commission's (SEC) referral to the Justice Department of an allegation that ITT had obstructed an SEC investigation by failing to turn over all relevant documents sought under an SEC subpoena;⁵ and

⁴ The full jurisdiction of WSPF is contained in the charter documents included below in Appendix J.

⁵ In June 1972 the Senate Judiciary Committee had referred its transcripts of the hearings on the nomination of Richard Kleindienst to be Attorney General—during which much testimony about the ITT antitrust settlement had been given—to the Justice Department for investigation of possible perjury. Shortly thereafter the SEC had referred its subpoena question to Justice. The investigation of these matters had not been completed in June 1973. On June 7 Richardson had asked Cox to take responsibility for the whole matter. Cox had agreed and Richardson had so notified the Chairman of the Senate Judiciary Committee.

—That the Special Prosecutor would investigate allegations of contributions to the President's campaign by the Lehigh Valley Dairy Association in return for assistance in matters affecting the Association.⁶

Cox realized that he must organize his office so that it could address new and developing allegations as well as assimilate quickly the vast amount of information which had already been uncovered in matters falling under his jurisdiction. He selected two colleagues from Harvard Law School—Philip Heymann, who had worked for Cox when Cox was Solicitor General, and James Vorenberg, who had served as Executive Director of the President's Commission on Law Enforcement and Administration of Justice⁷—to help him undertake these tasks. In their first days at WSPF, they resolved organizational details with the Attorney General, and established an operating relationship with the Assistant U.S. Attorneys for the District of Columbia who were working on the Watergate investigation, with the Assistant U.S. Attorneys for the Southern District of New York who were handling the Vesco case, and with the FBI. They attempted in the first few days to delay public hearings of the Senate Select Committee on Presidential Campaign Activities and to obtain an inventory, and prevent any possible removal, of documents in the White House files which might be useful to the investigations. During this early period they also recruited staff and supervised the physical establishment of an office.

Cox wanted the WSPF staff to be independent, professional and non-partisan. He felt this was necessary to instill confidence in the public that all allegations would be evaluated objectively and investigated fully and to instill confidence in potential witnesses that their evidence would be weighed seriously and would not be relayed to the Justice Department or to the White House. Although "administra-

⁶ It was decided that the Criminal Division (1) would handle two investigations already well underway in that Division; (2) would handle the civil cases *Ellsberg v. Mitchell* and *Halperin v. Kissinger*, charging illegal wiretapping, and would make available to the Special Prosecutor all pleadings before they were filed in the cases; and (3) would answer defense allegations in *U.S. v. Briggs* and *U.S. v. Ayers* that illegal methods had been used by the White House or the President's campaign committee to obtain evidence against the defendants and would send to the Special Prosecutor copies of all investigative requests to the FBI relating to these allegations and any information thereby developed by the FBI which related to matters within the Special Prosecutor's jurisdiction. In return the Special Prosecutor would send to the Criminal Division any information he developed bearing on these allegations. It was further decided that the Tax Division of the Justice Department would continue to handle potential gift tax violations in connection with political contributions and would advise the Special Prosecutor of violations related to matters within his jurisdiction.

⁷ Stephen Breyer, another Harvard colleague, also joined WSPF for the summer to help organize the ITT Task Force.

tively" his office was part of the Justice Department, he wanted it to function as a separate agency. No one from the Justice Department who had had any prior connection with cases within WSPF's jurisdiction or with the White House was hired. Any employee hired from the Department was formally transferred to the staff of the Special Prosecution Force. Cox early decided to establish his own press office rather than to use the Public Information Office of the Department to handle press contacts.

As soon as Cox's appointment was announced, a large number of applications came into his office. By estimate, more than 1,000 applications or expressions of interest came to the new office's attention in the first few weeks. Vorenberg reviewed these and, to fill the senior positions, Cox and he solicited recommendations and evaluations from judges, prosecutors and practicing lawyers. The need to build up a staff quickly required that applicants be available to begin work immediately. A number of those finally selected were known to Cox or Vorenberg through professional or school associations.

From the beginning it seemed clear that the Special Prosecutor's assignments fell into logical divisions and that the office could be organized into "task forces" along those lines. At the same time, because of certain similarities in the areas of investigation, it was recognized that a task force might turn up information of peripheral value which might be significant to another task force's work. Cox anticipated that central coordination and frequent contact among the task forces could minimize the possibility that such information would be neglected. In the first few weeks Vorenberg had principal responsibility for this coordination function which was seen as a primary function of the person who would become Deputy Special Prosecutor.

James Neal, a criminal defense lawyer who had served as U.S. Attorney in Tennessee, joined the staff on May 29 to head a task force investigating the Watergate break-in and cover-up. He spent the first few weeks at the District of Columbia U.S. Attorney's office working with the Assistant U.S. Attorneys who had been handling that case. Other early recruits were hired without specific assignments designated for them. Thomas McBride, a former prosecutor and criminal justice administrator, also joined on May 29. He was asked to gather information about several other areas of investigation. He met with the Assistant U.S. Attorneys handling the Vesco case and with attorneys from the Criminal Division who were investigating 1972 Presidential campaign contribution reporting violations. He shortly took over responsibility for the Campaign Contributions Task Force. Heymann worked with Neal on the Watergate investigation and then shifted to reviewing evidence of illegal activities by the White House Plumbers Unit. James Doyle, a national reporter for the *Washington Star News*, was hired to head the press office.

Thirty days after Cox took office the staff numbered approximately 33 persons, including 21 lawyers. By late June, Cox and Neal became concerned that the lawyers on hand would not be able to assimilate the mass of information being provided daily in testimony before the Senate Select Committee and other Congressional committees. Consequently ten recent law school graduates were hired and assigned to summarize the Congressional committee transcripts. In addition, Harry Bratt, a career Government administrator with background in computer usage, was hired to study the possibility of computerizing the growing volume of information.

Henry Ruth joined the staff as Deputy Special Prosecutor on July 2. Ruth, a former prosecutor from the Justice Department's Organized Crime Section, had later served as Deputy Director of the Crime Commission, and in 1973 was Director of the New York City Criminal Justice Coordinating Council. As Deputy, Ruth was to supervise the investigations closely and to coordinate the work of the task forces.

Also on July 2, Philip Lacovara, then Deputy Solicitor General of the United States, joined the staff as Counsel to the Special Prosecutor.

By mid-July, William Merrill, a former Assistant U.S. Attorney from Michigan, had been assigned to head the investigation of the "Plumbers" activities; Joseph Connolly, an attorney from Philadelphia, was designated as head of the ITT Task Force; and Richard Davis, a prosecutor from the U.S. Attorney's office for the Southern District of New York, was placed in charge of the investigation of Segretti's activities and other campaign "dirty tricks." (Later in the summer Davis took over joint responsibility with Connolly for the ITT Task Force.) In late July, on Bratt's recommendation, Cox approved the establishment of a computerized Information Section to provide the capability for comparing discrepancies in testimony and for completely cross-referencing subjects and persons mentioned in testimony. The lawyers of the Information Section were assigned to other positions in the office and a paralegal staff was hired and trained for the computer operation.⁸

By the middle of summer 1973, five task forces were in operation. By early September there were 42 lawyers (including four consultants) and 44 other staff members at WSPF. Although there was some staff turnover during the following 18 months and some refinements in the original organizational plan, the office continued with this general structure throughout its tenure, with the abandonment of a task force only upon completion of its work. The office had its highest number of employees in August 1974 when there were 95 staff members. An organizational chart of the office is shown on page 181.

⁸ The work of the Information Section is described in Appendix H.

DISMISSAL OF COX; ABOLITION AND RE-ESTABLISHMENT OF WSPF

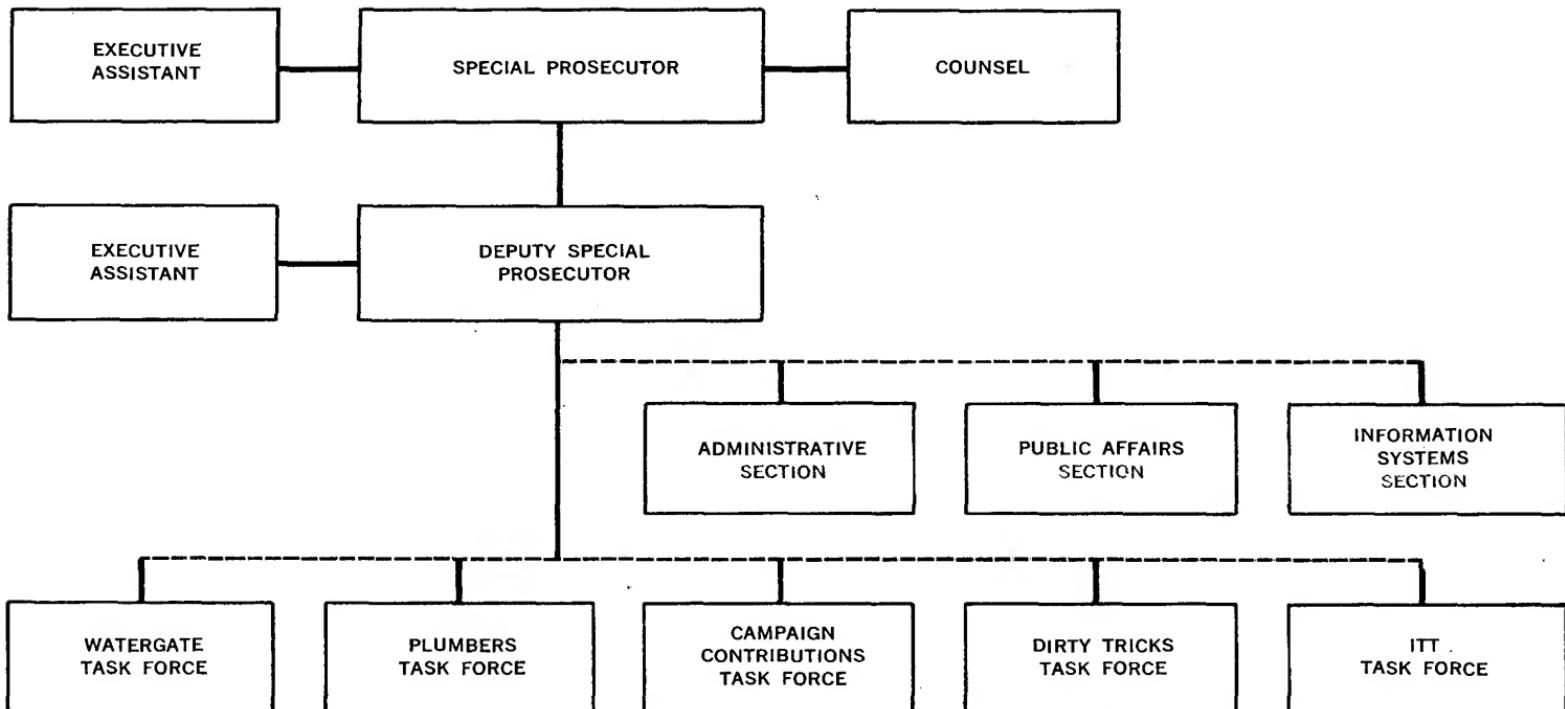
The events leading up to the firing of Cox and abolition of WSPF are set out in Chapter 4 of the principal report. This section describes the period immediately following Cox's firing.

After Acting Attorney General Bork fired Cox, General Haig, of the White House Staff, directed Clarence Kelley, Director of the FBI, to send agents to the WSPF office on the evening of October 20 to prevent removal of any documents. Agents were also dispatched to the Attorney General's and the Deputy Attorney General's offices.

For approximately 16 hours, from 9:05 p.m., on October 20, 1973, to 12:47 p.m. on October 21, 1973—agents of the Federal Bureau of Investigation occupied the offices of WSPF. Although official documents could not be removed, the most important and sensitive documents had been copied earlier in the week after White House counsel Charles Alan Wright hinted in an October 18 letter to Special Prosecutor Cox that if Cox refused to agree to White House compromise proposals on access to Presidential tape recordings, "we will have to follow the course of action that we think in the best interest of the country." Task force leaders and other senior staff members then removed copies of certain items from the office, replacing them when Judge John J. Sirica signed a protective order covering the files on October 26. Copies of documents of a particularly sensitive nature were placed in two safe-deposit boxes in nearby banks.

On the Saturday night of Cox's firing, the Special Prosecutor's staff immediately reported to the office. One of their main concerns was to secure files from anyone who might want to, or be ordered to, read or destroy the files. Since the FBI agent in charge did not have written instructions of his responsibilities and since he said he did not have authority to approve any movement of files within the office, Deputy Special Prosecutor Ruth contacted Henry Petersen, Assistant Attorney General for the Criminal Division of the Justice Department, and received approval to gather the most sensitive papers and place them in front office file safes to which only a few WSPF personnel had the combinations. Ruth also advised Petersen that an important witness was scheduled to testify before the grand jury the following Tuesday and Petersen agreed that that appointment should be kept. Bork gave assurances that the Special Prosecutor's employees were not fired but were to be made employees of the Criminal Division. The staff was advised of these telephone calls and agreed not to take any precipitous action until they had a better understanding of the situation. Around midnight they left the office.

WATERGATE SPECIAL PROSECUTION FORCE



Sometime in the morning hours of October 21, the Justice Department ordered U.S. Marshals to replace the FBI agents occupying the WSPF offices. The marshals arrived at 12:47 p.m. that day.

The next day, a holiday, the staff gathered at the office to assess the situation. Bork announced that Petersen was now in charge of the investigation. That evening Ruth and Lacovara met with Bork and Petersen to discuss the operational relationship between WSPF and the Criminal Division. Ruth agreed to bring each task force to meet with Petersen. Ruth and Lacovara then returned to the office and briefed the staff on the meeting; the staff discussed alternatives and reached no firm conclusions about what it should do.

On Tuesday morning Judge Sirica assured the grand juries that they could rely on the court to safeguard their rights and preserve the integrity of their proceedings. He also scheduled a court hearing on the Presidential tapes at 2 p.m. that day. At the hearing Wright announced that he was not prepared to file a response, but was authorized to say that the President would comply in all respects with the court orders. Shortly thereafter Haig announced withdrawal of the offer of summaries of the tapes to the Senate Select Committee.⁹

That same day Bork issued a written order, effective as of October 21, abolishing the Watergate Special Prosecution Force and returning its functions to the Criminal Division. During the next few days Bork and Petersen met several times with Ruth and Lacovara and met once with the full senior staff of the office. Petersen and his assistant John Keeney met with task forces investigating ITT and dairy contributions, and the next week met with the task force investigating the break-in of Daniel Ellsberg's psychiatrist's office.

On October 24 Bork announced that the White House had agreed there should be "regularized procedures" for turning over evidence to the Watergate prosecutors. During that week and the next, draft letters to the White House asking for various records were sent by several task forces to Petersen for his consideration and Petersen and Bork were briefed by Ruth on past difficulties the office had encountered in trying to get documents from the White House.

On October 25 Petersen joined the senior staff in a petition to the District Court for a protective order prohibiting the removal of any grand jury records from the office except by the staff in the course of their work. This request was granted by Judge Sirica the next day; he assigned the General Services Administration the responsibility for ensuring nonremoval.

During this week and the next, the normal work of the office, such as interviewing witnesses in the office or in the grand jury and requesting the FBI to interview witnesses or obtain documents, was not directly supervised by Petersen, but he was kept informed about

⁹ The Committee earlier had subpoenaed Presidential tapes for its hearings.

major matters. He was briefed on and concurred with the position WSPF was planning to take in further court proceedings over the subpoenaed tapes and Bork approved that the proceedings be handled by WSPF. On October 30 Ruth and Lacovara met with Judge Sirica and White House Counsel Buzhardt to work out the procedures for resolving claims of executive privilege which the President might have with respect to particular passages in the tapes. During the meeting, Buzhardt informed Sirica that two of the subpoenaed conversations had not been recorded. Sirica scheduled a public hearing for the next day to examine the reasons for their nonexistence.

On the evening of October 26, President Nixon announced in a press conference that Acting Attorney General Bork would appoint a new Special Prosecutor for the Watergate matter, said that he would not provide any new tapes and documents involving Presidential conversations to the new prosecutor, and indicated that the prosecutor would not be allowed to seek such material through the courts. Softening that position, Haig said on a television program on October 28 that the new Special Prosecutor would not have to pledge not to seek White House tapes and documents.

Over the weekend Bork began calling possible candidates. On October 30, Haig called Leon Jaworski of Houston, Texas, who had served as president of the American Bar Association, and asked him to accept the position; Jaworski agreed to come to Washington the next day to discuss it. Jaworski said he would take the job only if he would be free to bring judicial proceedings if necessary to obtain tapes and other materials he needed. At their meeting Haig left the room and a short time later returned and told Jaworski that the President had agreed that Jaworski would have the right to seek any materials he felt were necessary to carry out his duties and could go to court against the President, if necessary, to obtain such materials. This assurance was then repeated to Bork, White House Counsel Garment and Buzhardt, Petersen, and Senator William Saxbe, whom the President had chosen to be the new Attorney General. Jaworski accepted the job on the basis of these assurances. No change in the jurisdiction of the Special Prosecutor was discussed.

On November 1, President Nixon announced the nomination of William Saxbe to be Attorney General. Bork then announced the appointment of Jaworski. He said that Jaworski would have the same charter as Cox had had and said that the President had given his personal assurance that he would not exercise his right to fire the Special Prosecutor without first obtaining the consensus of the majority and minority leaders of the House and Senate and the chairmen and ranking members of the House and Senate Judiciary Committees. An order in accordance with this assurance was issued by Bork the next day.

Jaworski was sworn in as Special Prosecutor on November 5. That afternoon he addressed the entire staff of WSPF, then met with the senior staff, and then with Cox, Ruth and Lacovara. He began his duties promptly by meeting the next day with each of the task forces to review their investigations.

REACTION TO COX'S FIRING AND LEGISLATIVE PROPOSALS TO ESTABLISH A SPECIAL PROSECUTOR

Cox's press conference on October 20 had been televised nationally. Following it, and greatly increasing after the resignation of Richardson and the firing of Cox and Ruckelshaus were announced, the public overwhelmingly expressed support for Cox and dismay at President Nixon's actions.¹⁰ Many insisted that the President comply with the court orders, resign, or be impeached. On October 22, NBC News reported that a scientific sampling poll conducted since the night of October 20 showed 44 percent of Americans favored impeaching Nixon, 75 percent opposed the dismissal of Cox, 48 percent thought Nixon should resign, and 54 percent thought Watergate should not be "put behind us."

Labor leaders, lawyers, newspapers, and others called for the President's resignation or impeachment. Ralph Nader announced that he would file a lawsuit challenging the firing of Cox. The president of the American Bar Association, Chesterfield Smith, called on the courts and the Congress to take appropriate action, including but not limited to creation of a new Special Prosecutor independent of the executive branch. Various protest marches and rallies were held.

Hearing of the resignation and firings, the Senators who had been drawn into the tapes issue also were dismayed. Senator Baker said he was shocked and said he had not known in advance that President Nixon was planning to forbid Cox to pursue his court quest. Senator Ervin said he did not see where his and Baker's tentative agreement with the President to accept verified transcripts of taped conversations would have any relation whatever to Cox or his work. Senator Stennis, the proposed verifier, said that he had not been told that Cox had rejected the President's proposal.

On October 22 the Associated Press polled 75 House members and found 44 for impeachment and 17 undecided. The few House Democratic leaders who were in Washington over the holiday weekend met and tentatively agreed that the House Judiciary Committee

¹⁰ The public reaction was reflected in telephone calls, telegrams, and letters to the White House, the Congress, and other Government agencies. On October 23 Western Union announced that its Washington office had been inundated and that three high-speed teleprinters had been installed in Virginia to handle the backlog. Over 160,000 telegrams had been received. By October 29, over 350,000 telegrams had been sent to Washington on this issue in the preceding nine days.

should make a preliminary investigation to determine whether there were grounds to impeach President Nixon. They also discussed whether Congress could, constitutionally, create a special prosecutor post in the executive branch completely independent of presidential control. They scheduled a meeting with the full leadership for the next day to discuss these issues further. The Senate Judiciary Committee scheduled a meeting for October 24 to decide whether to conduct a hearing on the resignation and firings.

On the morning of October 23, House Republican leaders met with Presidential Advisor Bryce Harlow and told him that they would not try to block impeachment proceedings unless the President made the Watergate tapes available to the District Court. They also urged appointment of a new Special Prosecutor. When the House convened at noon that day, Gerald Ford announced, on behalf of the Republican leaders, that they had no objection to the Democratic plan to refer impeachment resolutions to the House Judiciary Committee. Already that morning seven such resolutions had been so referred.

That same morning Elliot Richardson held a nationally televised press conference at the Department of Justice. While refusing to charge President Nixon with failure to respect the claims of the investigative process, Richardson declared that in going to the Department of Justice his single most important commitment to helping restore the integrity of the governmental processes was his pledge to the independence of the Special Prosecutor and that he could not be faithful to that commitment and also acquiesce in the curtailment of the Special Prosecutor's authority. He said that in Cox's shoes he would have done what Cox had done, and he said he thought a new Special Prosecutor should be appointed.

After the 2 p.m. announcement that the President would turn the subpoenaed tapes over to Judge Sirica, Haig and Wright held a press conference at the White House to explain the reversal. Haig gave the President's reasons for having sought the compromise: polarization within the body politic, with the threat of impeachment and the possibility that the President might be removed with no Vice President in office; the intensification and prolongation of debate if the President appealed the case to the Supreme Court; and suspicion of disunity by any foreign leader calculating the unity, permanence, strength, and resilience of this Government. Calling President Nixon's proposal that Stennis listen to and report on the tapes "a herculean effort to resolve the constitutional crisis" and "a fundamental concession in the national interest," Haig said that when Cox defied the President by challenging the proposal the President had no alternative but to dismiss him.

Denying that President Nixon had decided before the previous week to dismiss Cox because his office was making its investigations

broader than the President considered proper, Haig said that "many of us" were concerned about the political alignment of Cox's staff, that it was roaming outside its charter, and there had been occasions, before the dispute of the previous week, when the President was not pleased with Cox's conduct.¹¹ Haig indicated that the President would adhere to his plan to put the Watergate case within the institutional framework of the Department of Justice.

This plan was strongly opposed by many members of Congress. On October 23, establishment of an independent special prosecutor was proposed in two House bills, one calling for appointment of the prosecutor by majority vote of the House and Senate, the other calling for appointment by the Chief Judge of the Court of Appeals. In the Senate two bills calling for appointment of a special prosecutor by the Chief Judge of the District Court were introduced and referred to the Judiciary Committee.

Throughout the week House Republican leaders met with Bryce Harlow and White House lawyers to implore them to persuade President Nixon to name a new special prosecutor in order to forestall the legislation. Senate Republican leaders urged the same and agreed that if the President declined they would support (or not oppose) legislation under which the District Court would do so.

The President's announcement on October 26 that he would have Bork appoint a new special prosecutor did not relieve Congressional pressure for a statutorily created prosecutor. Both the House and the Senate Judiciary Committees began consideration of such legislation the following week. Cox appeared before the Senate Committee on October 29, 30 and 31 to describe his former staff, his jurisdiction, his progress, and his unsuccessful efforts to obtain documents from the White House. He urged legislation to create an Office of Special Prosecutor with District Court appointment of the prosecutor, jurisdiction at least as broad as he had had, and specified standing to invoke judicial process to obtain evidence. The House Judiciary's Subcommittee on Criminal Justice began its hearings on October 31 and heard legislators, lawyers, and law professors support various legislative proposals.

Notwithstanding the announcement on November 1 of Jaworski's appointment, both the Senate Judiciary Committee and the House Judiciary Subcommittee on Criminal Justice continued their hearings on the special prosecutor legislation.

Bork testified before the House Subcommittee on November 5 that any such legislation could be unconstitutional and indicated

¹¹ In his October 20, 1973, press conference, in referring to his telephone call from Wright on the evening of October 18, Cox said: "It was my impression that I was being confronted with things which were drawn in such a way that I could not accept them."

that he might advise the President to veto it. He pointed out that defendants could go free if the legislation were found unconstitutional and that witnesses and evidence could be lost in the delays for testing the law's constitutionality. He emphasized the Special Prosecutor's independence as assured by Haig and by the Congressional "consensus" clause in the new Special Prosecutor charter. Bork was followed by Cox who told the Subcommittee that he felt the overriding concern was continuing the Watergate investigations. Thus, prompt action on either a statute for District Court appointment of a new special prosecutor or one for Presidential appointment with approval of the Senate was more important than which of the two methods was chosen.

Richardson testified before the Senate Judiciary Committee on November 6 and 8. He reiterated the practical reasons he had given in his nomination testimony for establishment of a special prosecutor only within the executive branch and suggested appointment of a new prosecutor by President Nixon with confirmation by the Senate. He also called for a commitment by the President to waive executive privilege with respect to any Presidential materials the Special Prosecutor needed and suggested that the Senate might hold up their confirmation of Saxbe as Attorney General until the President made such a commitment.

On November 8, Jaworski testified before the House Subcommittee that passage and legal testing of a statute providing for appointment of a Special Prosecutor outside the executive branch would delay the effective work of his office for an extended period of time and that he had what he considered all of the independence that could be expected by a Special Prosecutor. He stressed the unqualified assurances he had received from Haig, after Haig had consulted with the President, that there would be absolutely no constraints on his freedom to seek any and all evidence and to invoke judicial process should he consider it necessary.

The Subcommittee then drafted, and on November 12 referred to the full Judiciary Committee, a bill under which a Special Prosecutor would be appointed by a panel of three judges of the District Court, and removed only by that panel and only for gross dereliction of duty, gross impropriety, or physical or mental inability to discharge his powers and duties. The Special Prosecutor would have all of the jurisdictional and functional authority that the previous Special Prosecutors had had, would report annually to the panel, the Attorney General, and the Congress, and would serve for a term of three years.

On November 14 Bork testified before the Senate Judiciary Committee, reiterating the practical problems and constitutional questions that he had voiced before the House Subcommittee as to the special prosecutor legislation. He emphasized the important safeguard that the Congressional consensus clause added to the Special Prosecutor's

independence and explained that, although he had not spoken to the President personally about it, he considered the President's knowledge that he was going to include the clause to be the President's personal assurance and a moral commitment by the President to the Congress and the American people. Bork explained that, in addition to dismissal, the consensus requirement related to any attempt to limit the Special Prosecutor's power.¹²

The final witness before the Senate Judiciary Committee was Jaworski, who testified on November 20. He emphasized the strength of the assurances he had received both from Haig and from the charter re-establishing the Prosecution Force. Jaworski explained that he thought his charter included all of the matters he thought he should have under his jurisdiction and that if he came upon some matter which he thought he should investigate which was not included he would ask the Attorney General for its inclusion. He pointed out that Bork had told him he was to be completely independent from any obligation to report to or to seek the advice or counsel of the Attorney General.

The House Judiciary Committee reported its Subcommittee's Special Prosecutor bill to the full House on November 26, with an additional provision that the Special Prosecutor report at least monthly, to the chairman and ranking minority member of the Committee, any information pertinent to whether impeachable offenses had been committed by Richard Nixon. The Senate Judiciary Committee, divided equally, reported two bills to the full Senate on December 3, one similar to the House bill and the other providing for appointment of a Special Prosecutor by the Attorney General after consultation with Senate leaders and prohibiting removal of the Prosecutor without the consensus of certain congressional leaders. None of the bills was enacted into law.

A further opportunity for the Senate to consider the independence and authority granted to the Special Prosecutor under the charter prepared by Bork was afforded to the Senate Judiciary Committee in the November 1973 hearings on the nomination of Saxbe to be Attorney General. Saxbe pledged that Jaworski would operate completely freely and Saxbe would see him only at Jaworski's request, that he would give Jaworski any reasonable assistance he could furnish from the Justice Department, and that he would inform the Committee of any White House attempt to limit the jurisdiction or to

¹² This aspect was not clear in the charter. On November 19 Bork issued an amendment specifying that the jurisdiction of the Special Prosecutor would not be limited without the consensus of the designated members of Congress. This order and a clarifying letter from Bork are included in Appendix J. For a fuller explanation of the assurance, see Bork's testimony before the Senate Judiciary Committee on December 13, 1973 (93d Congress, 1st Session, Hearings on the Nomination of William Saxbe to be Attorney General, pp. 85-88).

tamper with the charter of the Special Prosecutor. Jaworski promised to bring any impasse to the attention of the Congressional "Committee of Eight" designated in his charter and the Judiciary Committees of the House and Senate.

CIVIL SUIT AGAINST COX'S DISMISSAL

On October 23 Ralph Nader and other co-plaintiffs filed a civil suit against the firing of Archibald Cox with Acting Attorney General Bork named as defendant. On October 29 Nader filed a motion to have Cox reinstated as the Special Prosecutor and to have the Watergate investigations halted until Cox reassumed control. On November 9, Judge Gesell dismissed Nader as a plaintiff, stating that Nader clearly lacked the legal standing to bring such a suit, declined to order Cox reinstated, noting that Cox had not entered the case or otherwise sought reinstatement, and declined to halt the investigations, noting that a new Special Prosecutor had been sworn in and that the public interest would not be served by placing restrictions on his investigations.

On November 14 Gesell found that the firing of Cox, in the absence of a finding of extraordinary impropriety as specified in the regulation establishing the Office of Watergate Special Prosecutor, was illegal, that that regulation barred the total abolition of the Special Prosecutor's office without the Special Prosecutor's consent, and that even if the regulation did not bar total abolition without that consent, its revocation under the circumstances presented in this case was arbitrary and unreasonable and was therefore illegal. Gesell called the abolition and reinstatement of the office under a virtually identical regulation "simply a ruse to permit the discharge of Mr. Cox without otherwise affecting the office of the Special Prosecutor." As to the legality of Leon Jaworski's service, Gesell held that Bork's actions in appointing a new Special Prosecutor were not themselves illegal since Cox's decision not to seek reinstatement necessitated the prompt appointment of a successor to carry on the important work in which Cox had been engaged.

Relations With the Office of the United States Attorney for the District of Columbia

The original Watergate investigation was conducted under the general supervision of the Justice Department and Harold Titus, U.S. Attorney for the District of Columbia. The Assistant U.S. Attorneys who handled the investigation on a day-to-day basis were Earl Silbert (Principal Assistant U.S. Attorney), Seymour Glanzer (head of the U.S. Attorney's Fraud Section), and Donald Campbell. Their investigation resulted in the indictment on September 15, 1972, of seven men in connection with the burglary and bugging of the Democratic National Committee headquarters at the Watergate. By late January 1973, the seven defendants had been found guilty—five after pleas of guilty and two following a jury trial. All except McCord were sentenced to provisional prison terms on March 23.

After these convictions, the Assistant U.S. Attorneys continued their investigation during the spring of 1973, spurred on by charges by one of the convicted men that there had been a widespread cover-up, involving senior White House officials among others, to conceal the involvement of CRP officials in the planning of the break-in. These charges, together with continuing revelations by the *Washington Post* and other newspapers and the April 30 departure from the Nixon Administration of Ehrlichman, Haldeman, Kleindienst, and Dean, created mounting pressure for the appointment of an independent prosecutor to take over the Watergate investigations.¹

On May 25, Attorney General Elliot Richardson appointed Archibald Cox as Special Prosecutor to investigate "Watergate" matters. Cox was given assurances of complete independence and within a week, Richardson issued a directive to all Justice Department personnel:

Effective immediately, all Divisions, Offices, Services, and Bureaus of the Department, including the Federal Bureau of Investigation and all United States Attorneys, will report to and cooperate with the Special Prosecutor on all matters within his jurisdiction.

While those who had been in charge of the original investigation were notified in the directive that "work on pending investigations or

¹ The Senate had already appointed a Select Committee to conduct its own investigation of the Watergate scandals.

prosecutions shall continue for the present without interruption," all those previously engaged in conducting the investigations were directed "to make prompt written reports to the Special Prosecutor of all allegations and pending investigations or prosecutions falling within the jurisdiction of the Special Prosecutor."

Their replacement by a Special Prosecutor could not help but rankle the U.S. Attorney and his staff, as it seemed to cast doubts on their integrity and to suggest that their investigation had been less than thorough.² Assistant Attorney General Henry Petersen, head of the Justice Department's Criminal Division, commented forcefully on this point during his testimony before the Senate Select Committee a few months later:

I resent the appointment of a Special Prosecutor. Damn it, I think it is a reflection on me and the Department of Justice. We could have broken that case wide open and we would have done it in the most difficult circumstances. And do you know what happened. That case was snatched out from under us when we had it 90-percent completed with a recognition of the Senate of the United States that we can't trust those guys down there, and we would have made that case and maybe you would have made it different, but I would have made it my way and Silbert would have made it his way and we would have convicted those people and immunized them and we would have gotten a breakthrough. I am not minimizing what you have done or the press or anyone else, but the Department of Justice had that case going and it was snatched away from us, and I don't think it fair to criticize us because at that point we didn't have the evidence to go forward.³

² The Special Prosecutor was alert to the possibility that his predecessors might be viewed as scapegoats. In a later letter to the Senate Judiciary Committee which was considering the nomination of Silbert to be U.S. Attorney for the District of Columbia, he expressed the view that Silbert and his colleagues had acted with fairness and professionalism during their handling of the investigation.

³ Hearings before the Senate Select Committee on Presidential Campaign Activities, 93d Cong., 1st Sess., Book 9, Testimony of Henry E. Petersen, Assistant Attorney General, Criminal Division, U.S. Department of Justice, Aug. 7, 1973, p. 3639.

The Special Prosecutor's staff found that far from being "90-percent completed," 9 months of additional work was needed before indictments in the Watergate cover-up case. When WSPF was formed, only 2 months had elapsed since James McCord's letter to Judge Sirica and the complex nature of the case required much more investigative work by the prosecutors. In fairness to Petersen, it should be noted that much time was spent in obtaining and analyzing White House documents and tapes, evidence which had been unavailable to the original prosecutors.

The decision of the Senate to conduct its own investigation also angered the U.S. Attorneys. On May 15, U.S. Attorney Titus wrote to Attorney General-designate Richardson, complaining that the timing of the Committee's pending hearings confronted the U.S. Attorney's office with the possible "insuperable" obstacle of prejudicial pretrial publicity. Although expressing sympathy for the prosecutors' concerns, Richardson explained that there was little he could do until his appointment was confirmed other than to discuss the problem at the earliest possible opportunity with the Chairman of the Committee and the yet-to-be appointed Special Prosecutor.

Cox's first act following his appointment as Special Prosecutor on May 25 was to seek the continued assistance of Silbert, Glanzer and Campbell on the Watergate case, although he had reached no decision regarding their permanent status with the Special Prosecutor's office. Cox's primary interests at the time were to preserve the integrity and continuity of the investigation, familiarize himself with the work already performed, and establish his own authority to make decisions concerning the matters under his jurisdiction.

On May 24, even before assuming office, Cox had made these points clear in a letter to U.S. Attorney Titus. Among other things, Cox urged that there be no break or delay in the investigation. He wrote:

The public interest requires you as honorable and responsible public officials to carry on while I am familiarizing myself with all that has been done; and at that time we can see what is most appropriate for the future. As soon as I have taken office in the Department, I would of course expect to be consulted before any decisions were made.

In an early meeting with Titus, Cox went over many of the points covered in his May 24 letter, emphasizing the need to refrain from any public comment on the investigation or, if any public comment were appropriate, that it come from the Special Prosecutor himself.⁴ What particularly concerned Cox at this juncture were press reports speculating on possible prosecutorial theories regarding the Watergate cover-up. Cox emphasized to Titus that all decisions about case theories, decisions to prosecute or acceptance of guilty pleas "will be made by me," and instructed Titus and his staff to "refrain from any kind of statement or comment about any aspect" of the case.

On May 25, however, the *Washington Post* reported an announcement by Titus that the Watergate prosecutors had reached a breakthrough, that "an unidentified member of the criminal conspiracy to cover up the Watergate affair will plead guilty and testify against others involved," and predicted that there would be "comprehensive indictments within 60-90 days." Titus was also quoted as having said that his assistants had developed "and outlined before the grand jury a comprehensive and coherent theory of prosecution." The article went on to quote "sources" familiar with the investigation who defended the work of the original Watergate prosecutors and pointed out that "the withdrawal of the three prosecutors from the case after 11 months of investigation would seriously delay indictments." Finally, the article stated that most of the work on the cover-up case

⁴ Cox's handwritten notes taken during the meeting show this concern: "Press stories (a) damaging to professionalism and fairness of investigation—prejudice fair trial—prejudice me. (b) pledge of the tightest security; no discussions of any kind whatsoever with any member of the press: no state's 'statements'."

was complete, and U.S. Attorney Titus hinted that negotiations were underway "toward getting others involved in the Watergate cover-up to plead guilty."

These statements and unattributed comments in support of the original prosecutors, coming at the outset of Cox's own investigation, suggested an attempt to force Cox to retain the original prosecutors and to acknowledge their theory of the case. These statements may also have been the basis for Petersen's later claim that the investigation was "90-percent completed" when Cox took over.

Also, on May 25, the day Cox became Special Prosecutor, he met with Silbert to emphasize that "no significant action of any kind should be taken without alerting me and giving me a chance to exercise my judgment. Specifically, there should be no further press releases about any aspect of these cases."⁵ Four days later, on May 29, Silbert sent Cox a memorandum suggesting areas in which the Special Prosecutor could be of significant aid to the U.S. Attorneys in the conduct of the Watergate investigation: these included assistance with problems arising out of the upcoming Senate hearings; the need to secure documents from the White House; and the task of digesting grand jury testimony. Shortly thereafter, Cox assigned two members of his fledgling staff to work with the U.S. Attorneys on these and other problems.

On June 7, Silbert and his team wrote a status memorandum to Cox. The 87-page document summarized the evidence to date both in the cover-up matter and in the investigation of the Plumbers' break-in at the office of Daniel Ellsberg's psychiatrist in California. The summary also included a status report as to many possibly involved individuals and reported on informal and formal immunities that had been granted some witnesses. At the same time, Silbert and Cox had a disagreement over whether or not the original prosecutors could send investigative requests directly to the FBI. Cox cancelled such a request from Silbert to the Bureau and directed that Silbert, Glanzer and Campbell move to the Special Prosecutor's offices with their files. In a letter to Titus, Cox explained his order on the basis of a "firm conviction that such a move is essential if their work with members of my staff is to go forward conveniently and effectively."

Throughout the remaining part of June, Cox's staff became familiar with the cover-up investigation, and inevitably the nature of the Special Prosecutor's charter required that Cox's own team take over the matter. On June 29, 1973, in a five-page letter to Cox, the three original prosecutors asked to be relieved of Watergate-related responsibilities and to return to the U.S. Attorney's office.

⁵ Memo from Cox to Titus dated May 25, 1973, relaying Cox's comments to Silbert that morning and requesting Titus to follow the same instructions.

In reply, Cox spoke kindly of the three men:

You acted in a highly creditable fashion in acceding to my request that you put the interests of the Watergate investigation ahead of your own wishes and give us the benefit of your knowledge and experience during a period of transition.

Perhaps I may add in closing that I realize this has not been an easy time for you. I am aware of various criticisms of your earlier conduct of the investigation and prosecution of seven defendants. Lawyers often differ on questions of judgment, and there are points on which my judgment might have varied from yours. Thus far in the investigation, however, none of us has seen anything to show that you did not pursue your professional duties according to your honest judgment and in complete good faith.

By July 1, a month after Cox had commenced his assignment, the Watergate investigation was entirely in the hands of the new Special Prosecutor.

In the ensuing 2 years, Silbert and his staff frequently made themselves available for consultation regarding various aspects of their earlier Watergate inquiry and other investigations; there were a number of referrals of investigative matters between the two offices; and the U.S. Attorney's office provided assistance to the Special Prosecutor's office when new grand juries were empanelled and when it became necessary for WSPF to obtain office space and support facilities in the courthouse during the trials it conducted. Thus, although the U.S. Attorney's office assumed a minor role in the Watergate investigation after the early summer of 1973, it provided valuable assistance during the remainder of WSPF's tenure.

Relations With the Attorney General

INTRODUCTION

Under the regulations establishing the Office of the Watergate Special Prosecution Force,¹ the Director of the Office is the Special Prosecutor appointed by the Attorney General. The regulations provide, in effect, that the Special Prosecutor is to exercise the powers of the Attorney General in all matters under his jurisdiction and is to operate without direction from the Attorney General. The regulations also provide that there may be such consultation between the Special Prosecutor and the Attorney General as the Special Prosecutor deems appropriate.²

There has been, however, no impenetrable insulation between the Attorneys General and the three Special Prosecutors who have served since May 1973. This was particularly true during the months immediately following the establishment of the office when there were a number of contacts between Special Prosecutor Cox and Attorney General Richardson and their respective staffs. These contacts were part of a continuing process of clarifying questions about the scope of the Prosecutor's jurisdiction, discussing Government policy on especially sensitive matters, arranging for the exercise of powers which only the Attorney General could exercise, and developing mechanisms for accommodation and cooperation in areas of overlapping interest between the Special Prosecutor and the regular operating divisions of the Department of Justice.

THE SCOPE OF THE SPECIAL PROSECUTOR'S CHARTER

The early contacts between Richardson and Cox after Cox's appointment focused upon questions about the proper line of demarca-

¹ 28 C.F.R. § 0.37 *et seq.*

² See generally *United States v. Nixon*, 418 U.S. 683 (1974).

tion between the jurisdiction of the Special Prosecutor's office and that of the Criminal Division. Although it was clear that the Special Prosecutor superseded the United States Attorney and the Assistant Attorney General in charge of the Criminal Division in such matters as the Watergate cover-up investigation, transitional problems remained. One of the most important of these was the extent to which cooperation and assistance would be available from the prosecutors previously involved in the investigation.³ In addition, there were possibilities that investigations by the Special Prosecutor's office into illegal corporate political activity might overlap with similar investigations normally under the jurisdiction of the Elections Unit in the Fraud Section of the Criminal Division. The resolution of this problem involved assertion of primary jurisdiction by the Special Prosecutor, with the Fraud Section continuing with a number of General Accounting Office referrals where investigation was well underway. As to these, the Special Prosecutor retained supervisory authority.

The first sharply-defined question about the Special Prosecutor's jurisdiction arose on July 3, 1973, when an article in the *Los Angeles Times* claimed that the Special Prosecutor had begun a preliminary investigation into the expenditures of public funds for President Nixon's home in San Clemente, California. Attorney General Richardson, responding to an inquiry from the White House, contacted the Special Prosecutor to express his doubt that such an investigation fell within the Special Prosecutor's jurisdiction. Special Prosecutor Cox explained that the story was inaccurate because in fact there was no such investigation under way, but he objected to an interpretation of his charter that excluded from his jurisdiction one kind of allegation involving the President. It was agreed that the Special Prosecutor would issue a public announcement stating that the *Times* story was unfounded.

A week later, the Attorney General and the Special Prosecutor met to discuss whether the Justice Department should screen factual allegations to ascertain whether they were substantial enough to warrant referral to the Special Prosecutor's Office. The Special Prosecutor objected to any procedure that would have the Criminal Division do such a screening; instead it was agreed that all allegations apparently falling within the jurisdiction of the Special Prosecutor would be referred immediately to him for his determination whether they fell within his sphere of responsibility and, even if so, whether they should be remanded to the Criminal Division for investigation and report. The latter category would include those allegations which were insufficiently substantial to warrant the Special Prosecutor's use

³ Appendix C details the WSPP relations with the U.S. Attorney's office in Washington, D.C.

of the office's limited resources or which related to investigations pending in the Criminal Division.

It was also agreed that the Criminal Division and the Special Prosecutor's office would keep each other informed of significant developments in matters handled by either of them where the developments might be of mutual interest, except where the Special Prosecutor determined that such a disclosure on his part would be inconsistent with his responsibilities. In a related matter the Special Prosecutor and the Attorney General agreed that, unless the Special Prosecutor determined in a specific case that it was not appropriate, he would inform the Attorney General confidentially of allegations of impropriety by any current employee of the Department of Justice as soon as such charges were brought to his attention. This arrangement reflected the recognition that the Attorney General had a legitimate interest in knowing promptly that a Justice Department official was under suspicion.

Another point of discussion involving the scope of the Special Prosecutor's charter arose in late July 1973 as a result of a request from the Special Prosecutor's office for an opportunity to interview Secret Service agents detailed to the White House. Attorney General Richardson stated that J. Fred Buzhardt, Special Counsel to the President, had objected to any inquiry by the Special Prosecutor's office into personnel assignments at the White House. Also raised at that time was the White House objection to the Special Prosecutor's request to interview Tom Charles Huston, the author of a secret 1970 White House plan to improve coordination among the Federal domestic intelligence agencies and to permit them to use illegal methods in gathering information. The Attorney General stated that the White House viewed this as part of an unauthorized and excessive investigation of all Federal intelligence activities during the Nixon Administration.

In response, the Special Prosecutor stated that there was no investigation of Secret Service personnel problems. However, if it should appear that any improper activities were carried out by Secret Service personnel acting on White House detail, Cox took the position that those activities fell within the branch of jurisdiction authorizing the investigation of allegations of wrongdoing by White House personnel.

With respect to Huston, the Special Prosecutor responded that such an interview was considered part of an investigation falling within the jurisdiction of the office. He informed Richardson that there was no comprehensive investigation of all intelligence agencies but that, in connection with an investigation of particular surveillance practices, various Federal agencies had been asked to describe their policies on electronic surveillance.

With respect to charges that Cox was exceeding his jurisdiction generally, WSPF told Richardson that he could assure the White House that the Special Prosecutor had sufficient matters clearly within his jurisdiction so that it was not necessary to force his way into matters beyond his delegation.

Avowed concerns by the White House and the Attorney General about "national security" surveillance policies continued to be a subject of discussion between Richardson and Cox in early August. Cox was interested in exploring certain surveillance policies of the Secret Service, but the Secret Service, on White House instructions, had declined to respond to the inquiries. At the Attorney General's suggestion the Special Prosecutor resolved the impasse by dealing with the General Counsel of the Treasury Department.

At a meeting on August 15, Richardson again raised the problems that had been encountered because of the general breadth of the Special Prosecutor's jurisdiction. He suggested that it might be desirable to rewrite the original charter to be more specific and explained that there were serious worries at the White House that the Special Prosecutor was exceeding the boundaries originally contemplated for the types of investigations that he would undertake. The original guidelines specifying the jurisdiction of the Special Prosecutor had been hurriedly prepared in May 1973, and the Special Prosecutor and the Attorney General both understood that there were fringe areas in the general grants of jurisdiction that might require some accommodation or interpretation in particular cases. Richardson expressed his understanding of the original mandate as including, for example, the activities of the White House "plumbers," but as not extending more broadly to other surreptitious surveillance activities that might have had some nexus with the White House, including the alleged wiretaps on former White House and National Security Council staff members and newspaper reporters.

Cox said that he regarded such an investigation as within the natural scope of the language or spirit of his mandate. He expressed the view, however, that because of some arguable uncertainties regarding the lawfulness of electronic surveillance in "national security" cases, there might be grounds for declining to prosecute regular law enforcement officers who had conducted surveillances formally approved by the Attorney General and bearing some palpable nexus to legitimate defense secrets. He suggested that the relevant factors in determining criminality would include (1) the regularized nature of the procedures and personnel involved; (2) the occurrence or non-occurrence of a physical trespass; and (3) the existence and basis of a good-faith belief that national security was directly involved. The parties agreed to think further about the jurisdictional issues and the substantive elements not yet resolved.

At a later meeting in August, the Attorney General gave the Special Prosecutor a draft of guidelines which, through the use of a screening mechanism, would have narrowed the original basis for jurisdiction over all White House staff members and Presidential appointees. The draft also restricted Cox's authority to the "‘plumbers’ operations if they constitute the commission of criminal offenses." Richardson also suggested the inclusion of the factors that the Special Prosecutor had enumerated as the basis for judging possible criminality; and he also proposed that the new guidelines, as merely interpretive of Cox's charter, need not be published. In addition, in order to alleviate the concerns of the White House about possible unintended and unforeseen damage to national security operations, he proposed that the Special Prosecutor should consider accepting a special consultant on national security matters. The consultant, he suggested, could serve as an intermediary between the Special Prosecutor's office and the intelligence agencies to advise the Special Prosecutor when he approached sensitive matters and to facilitate the acquisition of information. The Attorney General suggested a specific former CIA official as a candidate for such a position.

Cox objected to the limitations that Richardson proposed and insisted that they would have to be published, if ever issued, since any such modifications in his charter would reflect a substantial alteration in the original, public mandate. He said also that, while the idea of a particularly knowledgeable intelligence expert might have some value, he would consider the idea only if it was clear that such a consultant was accountable solely to him and had no authority to filter information before it came to him.

The Attorney General soon dropped both of these proposals and the parties simply decided that they would notify each other of any positions either the Special Prosecutor's Office or the Department of Justice proposed to take on national security issues, and they would attempt to resolve any conflicts at the staff level.

In early September, the Attorney General and the Special Prosecutor reviewed the jurisdictional question once again. Cox stated that upon review of pending investigations in his office he saw no problems of questionable jurisdiction. He stated his additional belief that under the charter there could be temporal boundaries on the matters that fell within his responsibility. Specifically, he did not regard his jurisdiction as extending to matters occurring after his appointment in 1973 except to the extent that they interfered with or obstructed his investigations or were part of a plan or course of conduct beginning at an earlier time. This limitation was seen as clearly warranted because an open-ended time frame for the charter would have given the Special Prosecutor's office the role of continuing to monitor Government conduct for an indefinite period. That kind of breadth

had not been the understanding of the limited purpose of selecting a Special Prosecutor to deal with specific problems or types of problems about which serious allegations had surfaced as of May 1973.

In addition, Cox told Richardson that almost all the matters currently under investigation covered a time period after January 1, 1971. They agreed that as a statement of attitude on Cox's part, this date could be regarded as a general backward limit of acts that WSPF was investigating except as to any major allegations about matters within the prime jurisdiction of the office and except as to possible criminal acts involving general characteristics of wrongdoing that were continued after January 1971. As to any borderline matters preceding January 1971, although they would fall within the broad general language of the WSPF charter, Cox said that he would secure a specific delegation from the Attorney General so that no valid legal issues could be raised. It was also agreed that the Special Prosecutor, if so requested by the Attorney General, would consider assuming jurisdiction over matters that would normally be beyond his authority.

The Special Prosecutor insisted, however, that he could not agree to any firm jurisdictional limitation on the kinds of cases ostensibly covered by the terms of his original charter without violating assurances he had given the Senate Judiciary Committee when he was initially appointed. For this reason, he explained that any efforts to modify the substantive scope of his jurisdiction would have to be raised with the Committee.

One specific area illustrates the way these arrangements were implemented. On September 21, Cox called Richardson to say that his investigations of illegal political activities had uncovered two situations occurring before January 1971 that were closely related to the 1972 campaign investigations: one was the 1970 so-called "Townhouse Operation" run by the White House to raise and channel funds to Congressional candidates sympathetic to the President, and the other was a 1968 contribution to the Presidential campaign of Senator Hubert Humphrey by Dwayne Andreas, whose activities were under scrutiny because a 1972 campaign contribution by him eventually had been deposited in the bank account of one of the Watergate burglars. As happened with all such requests from WSPF, the Attorney General agreed that the Special Prosecutor should proceed with both of those investigations.

EXECUTIVE PRIVILEGE

Another source of contact between the Attorney General and the Special Prosecutor involved the delicate and complex question of "executive privilege." From the earliest days, Cox experienced difficulties in obtaining documentary material or testimony from the White House. To the extent that a justification was given for

these refusals, the most frequent explanation was a claim of "executive privilege." Despite the irony of invoking such a privilege against an official of the Executive Branch, the White House adhered to this claim through two rounds of unsuccessful litigation which culminated in the July 24, 1974, decision of a unanimous Supreme Court directing President Nixon to turn over to the Special Prosecutor several dozen subpoenaed White House tapes.

During the earliest months of the Special Prosecutor's office, the issue of executive privilege was one of joint concern to Richardson and to Cox. On the one hand, Cox understood that he had an obligation to pursue evidence of crime which might be included in the papers of the President. On the other hand, he recognized that he was an officer of the Department of Justice and that the Department of Justice had for many years been asserting and defending claims of executive privilege and was then involved in litigating such claims in the Federal courts. On a number of occasions, Richardson and Cox met to discuss ways of accommodating their respective responsibilities with the least damage to the positions and responsibilities of the other.

As an outgrowth of these discussions, Cox determined that it would be sufficient for his purposes to confine his arguments against executive privilege to instances where evidence was needed for a grand jury investigation or for a criminal trial. This allowed the Department of Justice to continue taking its positions asserting executive privilege in civil litigation. This accommodation avoided any direct confrontation between the Special Prosecutor's office, technically a branch of the Justice Department, and the regular litigating divisions of that Department.

One continuing source of tension on this subject was the Special Prosecutor's request for access to certain White House papers related to the "milk fund" investigation. One of the investigations in the Special Prosecutor's office related to possible criminal activities in connection with the Administration's 1971 decision to increase the price support payments for milk. At the same time, there was pending in the United States District Court for the District of Columbia a civil suit, *Nader v. Butz*, C.A. 418-72, which challenged the legality of that increase. Among the plaintiff's allegations were contentions that the price support increase had been directed for political reasons rather than for the reasons made relevant by the applicable statute. In connection with that litigation, the plaintiffs had subpoenaed various White House documents and a claim of executive privilege had been interposed. Although the documents were made available to the Civil Division of the Department of Justice in asserting and defending the claim of executive privilege, the White House refused to allow the Special Prosecutor's office access to those same documents. This distinction between the Civil Division and the Special Prosecutor's office—both units of the Department of Justice—pursuant to

which one was relied upon to assert executive privilege, while that same claim was invoked against the other, was an important example of the White House policy of non-cooperation with the Special Prosecutor's investigations.

Cox met several times on this point with Richardson who indicated that he was attempting to convince the White House legal staff that their position was untenable. On several occasions, Cox was told that the White House had not finally turned down his requests but that special reviews were being conducted. On August 13, Cox wrote to Richardson formally requesting access to the "Milk Documents" which the White House had given to the Civil Division for the *Nader v. Butz* suit. He explained that these were important to the criminal investigation and that, under the standing arrangement, the Special Prosecutor's office would not object to the Justice Department claims of executive privilege in civil matters but the Special Prosecutor would challenge such claims in criminal proceedings. Two days later Richardson told Cox that Buzhardt had instructed him not to turn over the milk papers and that Richardson had asked him to reconsider that order. Richardson asked Cox to delay pressing the issue to give him a chance to obtain reversal of it. It was not until November 1973, after Cox had been fired, that these papers were actually made available.

NATIONAL SECURITY

The difficult concept of "national security" was the subject of intermittent and inconclusive discussions between the various Attorneys General and Special Prosecutors. Although later evidence documented that much of the purported concern raised by the White House about "national security" was part of a plan to use that vague concept to frustrate legitimate investigations, the various Attorneys General and Special Prosecutors recognized that, as responsible public officials, they could not ignore legitimate requirements, both legal and practical, that sensitive defense and intelligence information be protected. A number of these meetings involved discussions (referred to above) distinguishing possible criminal activities conducted in the name of national security from those that could not or should not be prosecuted. There were also efforts to ascertain with some precision what the Department of Justice had officially sanctioned and what it had not purported to allow in the name of "national security." These discussions eventually spanned the tenures of all three Special Prosecutors and never produced a comprehensive statement from the Department as to all prior practices or as to the full scope of past or current policies concerning "national security" operations.

Finally, there were discussions about the difficulties that would emerge in prosecutions where either the government or the defense attorneys might need to present highly sensitive defense information in

public proceedings. It was understood from the outset that the Special Prosecutor would attempt to frame the legal theories of prosecution and the presentation of evidence in order to obviate the need for either the Government or the defense to utilize any such information. At various points both Special Prosecutors Cox and Jaworski were advised of such potential problems by either the Attorney General or the White House. When classified information was needed for trial at later dates, WSPF adopted the usual Federal executive practice of asking the classifying agency to declassify any document needed for trial. Although no insuperable problems ever, in fact, occurred, Cox recognized in the early months of WSPF's existence that legitimate national security concerns might force the voluntary dismissal of a case if classified material necessary either to the prosecution or defense could not legitimately be declassified, or even made available to a judge for decision about possible disclosure to the defense at trial.

ATTORNEY GENERAL'S POWERS

The final major subject of contacts between the Attorney General and the Special Prosecutor involved matters where action by the Attorney General personally was necessary. For example, under the "use immunity" statute, 18 U.S.C. § 6001 et seq., applications for court orders granting immunity in the face of a claim of the privilege against self-incrimination must be approved by the Attorney General, by his Deputy, or by a designated Assistant Attorney General. Although the Special Prosecutor had been delegated powers comparable to those of the Attorney General and an Assistant Attorney General, there was concern that the express reference in the statutes to specific officials who are selected by the President and confirmed by the Senate might not properly be extended to an official like the Special Prosecutor who was appointed by the Attorney General. This problem was specifically acute since the Justice Department at that time was attempting to convince the Supreme Court in the case of *United States v. Giordano*, 416 U.S. 505 (1974), that similar references in the Federal wiretap statute should be read to allow other Justice Department officials to exercise certain powers. (The Supreme Court subsequently ruled unanimously that only the officials referred to in that statute could validly act.) For this reason, a procedure was established under which the Special Prosecutor requested that the Attorney General approve applications for immunity, and the official certification of approval was made by the Attorney General. No problems ever were encountered in the implementation of this practice.⁴

⁴ In a related arrangement, the Special Prosecutor's office and the Criminal Division "Immunity Unit" regularly consulted about proposed immunity orders to insure that neither the Justice Department's operating divisions nor the Special Prosecutor's office unwittingly granted immunity to a person under active investigation by the other.

Access to tax returns also required involvement of the Attorney General since under the Internal Revenue Code⁵ and the implementing executive order, only the Attorney General, Deputy Attorney General, an Assistant Attorney General or a United States Attorney—officials appointed by the President and confirmed by the Senate—could apply for access to tax returns as part of the investigative process. Early in the Special Prosecutor's term, he requested that the Secretary of the Treasury arrange to amend the operative executive order to authorize the Special Prosecutor to obtain access to tax returns directly. This request was held up for several months, and on several occasions Richardson and Cox met to discuss how the Attorney General might resolve this issue, inasmuch as the White House apparently would not process the amendment to the executive order. No resolution was achieved prior to the resignation of Richardson and the dismissal of Cox. After the dismissal, Special Prosecutor Jaworski continued to pursue this issue and ultimately decided to submit requests for tax information through the Attorney General who forwarded them as a matter of course to the Internal Revenue Service. An amendment to the Treasury Regulations, or modification of the executive order, was not necessary, and in every instance the Special Prosecutor received the requested materials without delays.

CONCLUSION

Following the dismissal of Special Prosecutor Cox on October 20, 1973, the nature and number of contacts between the new Special Prosecutors and new Attorneys General declined sharply for several reasons. One was the uniqueness of the pre-existing relationship between Attorney General Richardson and Special Prosecutor Cox, which enabled them to deal with each other regularly and easily. In addition, after the discussions in the formative months of the Special Prosecutor's office, most of the structural issues had been resolved, and questions about the contours of jurisdiction were no longer as significant. Most importantly, the public and congressional reaction to the dismissal of Cox, and to the White House effort to override his independence and to undercut his judgment, would have made it very difficult as a political or policy matter for subsequent Attorneys General to assume any significant role in directly questioning the Special Prosecutors' judgments or even raising issues about them.

⁵ 26 U.S.C. 6103(a); 26 C.F.R. § 301.6103(a)-1(g).

Relations With Congressional Committees

INTRODUCTION

This Appendix describes the continuing relationships that WSPF developed with the Senate Select Committee on Presidential Campaign Activities, and the Senate and House Committees on the Judiciary. The relationship with the Senate Select Committee (SSC) arose from mutual needs to share information and coordinate often parallel investigations. WSPF's dealings with the House and Senate Judiciary Committees grew from the confirmation hearings in which Richardson pledged to establish WSPF. Later, after Cox's firing the Committee's consideration of various legislative proposals for a special prosecutor resulted in the Congressional protection of WSPF's existence and independence after its reestablishment.¹

In addition to these ongoing relationships, WSPF had intermittent contact with the Congressional committees that conducted inquiries on matters related to WSPF's work. Beginning in late May 1973, a WSPF staff attorney was assigned to identify and acquire transcripts of Congressional hearings on matters of interest to the Special Prosecutor. These eventually included hearings from the following: (1) the Senate Select Committee on Presidential Campaign Activities; (2) the Senate Appropriations Subcommittee on Intelligence Operations (regarding CIA assistance to the Plumbers and involvement in the burglary of Ellsberg's psychiatrist's office and in the Watergate cover-up); (3) the Senate Appropriations Subcommittee on Housing and Urban Development, Space, Science, Veterans and other independent executive agencies (regarding the SEC investigation into the activities of Robert Vesco); (4) the Senate Armed Services Committee

¹ Cooperation between WSPF and the House Judiciary Committee's impeachment inquiry staff is described in Chapter 4 of this Report. Appendix B discusses the consideration in 1973 of proposals for a legislatively-created special prosecutor. In July 1975, Special Prosecutor Ruth and former Special Prosecutor Jaworski testified before the Senate Committee on Government Operations to oppose a bill that would create, in effect, a permanent special prosecutor.

(regarding CIA involvement in domestic intelligence activities); (5) the Senate Commerce Committee (confirmation of Egil Krogh, former head of the Plumbers); (6) the Senate Foreign Relations Committee (confirmation of Richard Helms, former head of the CIA); (7) the Senate Judiciary Committee (regarding ITT and the Richard Kleindienst confirmation hearings and regarding the Watergate cover-up in the L. Patrick Gray confirmation hearings); (8) the House Commerce Committee's Special Subcommittee on Investigations (regarding the SEC's role in the Vesco and ITT matters). WSPF also received staff reports from the House Committee on Banking and Currency regarding, among other things, financial aspects of the Watergate burglary. The House Armed Services Subcommittee on Intelligence, which had held hearings on CIA involvement in the burglary of Ellsberg's psychiatrist's office and the Watergate cover-up, originally refused to provide transcripts of its executive session hearings.

In addition to these sources of information, in April 1974 the Joint Committee on Internal Revenue Taxation released a report on President Nixon's tax returns from 1969 through 1972. The report was useful to the attorneys from the Special Prosecutor's office who were investigating charitable contribution tax deductions taken by Nixon for his gift of pre-Presidential papers. Also, the staff of the Joint Committee cooperated fully with the WSPF attorneys in their investigation.

As investigations led to prosecutions, the Special Prosecutor's office had to comply with the legal requirement of supplying defense counsel with prior statements made by prospective trial witnesses on topics they would testify to at trial and any evidence in the Government's possession which tended to exculpate the defendant. Although he was convinced that this requirement did not extend to Congressional testimony, the Special Prosecutor, in an effort to be as complete as possible, wrote to a number of Congressional committees requesting that they turn over to the prosecutors any relevant executive session testimony or staff interviews that they possessed on matters approaching trial. Most of the committees immediately supplied the relevant material in their possession. The House Armed Services Committee eventually agreed to provide executive session material of witnesses who testified before the Subcommittee on Intelligence relative to the Subcommittee's inquiry into the alleged involvement of the CIA in the Watergate and Ellsberg break-ins. The testimony was made available for the Watergate cover-up trial.

In a few instances, members of Congress and Congressional committees referred matters to the Special Prosecutor's office for investigation. Any such allegation that merited full investigation was fully pursued. Others either did not fall within WSPF's jurisdiction or proved to lack potential after initial inquiry. In one instance, a

referral by a committee resulted directly in a conviction. On September 10, 1973, after G. Gordon Liddy refused to be sworn in to testify before the House Armed Services Committee's Subcommittee on Intelligence, the House of Representatives voted to cite Liddy for contempt of Congress. The case was referred by the U.S. Attorney for the District of Columbia to WSPF. Liddy was subsequently indicted on March 7, 1974, for refusing to testify or produce papers before a Congressional committee, and he was found guilty on May 10, 1974.

The Senate Select Committee on Presidential Campaign Activities

The Senate Select Committee on Presidential Campaign Activities (SSC) was established approximately three months prior to the appointment of the Watergate Special Prosecutor. Widespread allegations of executive misconduct had led the Senate to vote unanimously for the creation of a select committee to investigate the Watergate break-in and cover-up, campaign practices and financing, and campaign espionage during the 1972 Presidential campaign.²

The Committee's initial dealings with the Department of Justice involved requests for access to FBI investigative reports on the Watergate investigation, summaries of which were provided, and notices of intent to apply for court orders requiring witnesses to testify before the Committee.³ This caused considerable concern to the prosecutors investigating the Watergate case because any testimony or evidence obtained directly or indirectly therefrom could not be used against the witness in future prosecutions. A failure to prove no "taint" would result in the case being dropped. The SSC's decision to allow live television coverage of the hearings intensified the difficulty of such proof and raised the problem of a future claim by defendants that pre-trial publicity prevented the empanelling of an unbiased jury and the assurance of a fair trial.

The SSC public hearings opened on May 17, 1973, a week before Cox was sworn in as Special Prosecutor. Cox was immediately faced with the problem of publicity generated by the SSC's hearings and the

² The Senate Select Committee on Presidential Campaign Activities was established under Senate Resolution 60, dated February 7, 1973.

³ Under Federal law, a Congressional committee wishing to obtain testimony from a witness who refuses to testify on the grounds of his Fifth Amendment privilege against self-incrimination must notify the Attorney General ten days before seeking a court order compelling the witness to testify. The Attorney General cannot prevent the Committee from seeking the order but can ask the court for a delay of up to 20 days. When the Committee makes its application to the court, and the court finds that the Attorney General has not exercised his delay option or has done so and 20 days have expired, the court will order the witness to testify. The witness is thus "immunized" from any use of his testimony against him in criminal investigations or prosecutions.

effect this would have on his criminal investigations and subsequent indictments. On June 2, 1973, the Special Prosecutor met with Senator Ervin to request that the SSC temporarily suspend public hearings. Cox then expressed his concern in a June 4, 1973, letter to Senator Ervin and requested that the Committee consider two important points: one, the danger that pre-trial publicity might interfere with fair trials; and two, the risk that the Senate Committee's granting immunity to major potential defendants would bar successful prosecution. Senator Ervin responded in a June 5, 1973, letter stating that the public hearings would continue.

By this time, the SSC had applied to the District Court for orders requiring John Dean and Jeb Stuart Magruder to testify. Both Dean and Magruder were viewed by Cox as potential defendants. Ervin's letter led the Special Prosecutor to request that the District Court impose conditions on these immunity orders. Suggested conditions included requiring the exclusion of the broadcast media when Dean and Magruder were to testify or taking their testimony in executive session. The SSC argued that it was not within the court's power to impose conditions upon the grant of an immunity order. The court ruled that, since its duties in this regard were purely ministerial, it had no choice but to grant the Committee's request.⁴ Cox announced that he would not appeal the District Court order, but on June 19, 1973, prior to Dean's testimony before the SSC, he filed with the court a list of all the evidence against Dean that had been compiled previously by the U.S. Attorneys and WSPF. This was done to protect WSPF against future claims by Dean concerning the validity of an indictment or admissibility of evidence on the ground that such indictment or evidence was derived directly or indirectly from testimony compelled by the SSC. No "taint" papers were filed in regard to Magruder because he had already agreed with the U.S. Attorneys to plead guilty to a one-count information on his involvement in the Watergate matter.

On June 5, 1973, the Senate Select Committee filed with the court a notice of intent to apply for an order conferring immunity and compelling the testimony of Gordon Strachan. In an accompanying letter to the Attorney General, Majority Counsel Sam Dash requested a waiver of the 10-day notice period as well as the additional 20-day extension granted by law. Richardson referred the matter to Cox, as the Attorney General had already delegated to the Special Prosecutor his authority over immunity applications by the SSC.

On June 8, 1973, Cox's assistants, James Neal and James Vorenberg, discussed with Dash and Minority Counsel Fred Thompson the Special Prosecutor's concerns about immunizing Strachan, stating

⁴ Application of U.S. Senate Select Committee on Presidential Campaign Activities, 361 F. Supp. 1270 (D.D.C. 1973).

that more investigation was needed before they would be able to determine if Strachan was a potential defendant. Time was also needed to isolate the evidence against Strachan as was being done with respect to Dean. It was agreed that since the SSC would not schedule Strachan's testimony for about a month, WSPF would invoke the 20-day extension granted by law and take the matter up at the end of that period. On July 5, the Special Prosecutor notified the District Court that WSPF was not opposed to the SSC's request for an order compelling Strachan to testify and the court granted the order on July 6, 1973. Prior to Strachan's testimony before the SSC, the Special Prosecutor filed with the court a list of the evidence against him compiled by WSPF.

In regard to those witnesses who were testifying before the Select Committee without grants of immunity and who were viewed by WSPF as potential defendants, Cox suggested in a letter to Senator Ervin (concerning the SSC's scheduling of John Mitchell's testimony) that the Committee advise the witness of his status in the investigation, inform him of his rights and make it clear that "any testimony that he gives . . . without invoking his privilege against self-incrimination under the Fifth Amendment to the United States Constitution constitutes a waiver of that privilege" and that the waiver was not the result of compulsion.

After Alexander Butterfield testified before the SSC on July 16, 1973, about the existence of the White House taping system, the Special Prosecutor and Senate Select Committee both subpoenaed tapes of certain conversations that they felt were vital to their Watergate investigations. The President refused to comply with the subpoenas and both the Special Prosecutor and the SSC initiated litigation to force compliance. In an August 22, 1973, letter to Judge Sirica, Sam Dash attempted to have the SSC's case (*SSC v. Nixon*, CA 1593-73) and the Special Prosecutor's case (*In Re Grand Jury Subpoena Duces Tecum Issued to Richard Nixon*, Misc. No. 47-73) considered together. Both Cox and the President's counsel, Charles Alan Wright, noting the differences between the two cases on central issues, opposed the Committee's request. Since the District Court had already scheduled a hearing for August 22 on Cox's case, the Special Prosecutor was also concerned about possible delay in grand jury proceedings. The District Court decided not to consider the cases jointly and on October 17, 1973, dismissed the Committee's suit for lack of jurisdiction.

Representatives of the Senate Select Committee were then drawn into the dispute over the President's insistence that the courts could not order him to provide tapes subpoenaed from the White House by the Special Prosecutor. On October 19, 1973, the same day the Committee filed an appeal from the District Court's dismissal of their tapes suit and the day before the Special Prosecutor was fired, Senators

Ervin and Baker were called to the White House to meet with the President and his counsel. The President first met with Baker alone and then met with Baker and Ervin to discuss a solution to the tapes issue. After the meetings, the President announced that Cox had refused to accept a compromise on the tapes worked out between Attorney General Richardson, Senators Ervin and Baker and the White House.

Initial press reports indicated that Ervin and Baker had agreed to drop their litigation in exchange for summaries of certain tapes to be verified by Senator Stennis.⁵ Outrage by members of the SSC that they had not been consulted led Ervin to explain that an oral proposal had been made and that Ervin and Baker had agreed to present the compromise to the Committee.⁶ Both expressed shock, however, on learning that their agreement was tied to Cox's dismissal. Ervin stated that his and Baker's agreement had nothing to do with Cox's attempt to gain access to the tapes and later affirmed his understanding that the President was offering the Committee verbatim transcripts, not mere summaries. At any rate, before the SSC had a chance to clarify the situation, the White House withdrew its proposal; on October 23, 1973, White House Chief of Staff, Alexander Haig, announced that the "Stennis Compromise" reached on October 19 with Senators Ervin and Baker had been cancelled as a result of the President's decision to turn the subpoenaed tapes over to the District Court for the grand jury.

Meanwhile, the Senate Select Committee continued to press the case for compliance with its subpoena. On December 28, 1973, the Court of Appeals for D.C. reversed the District Court's determination that it had no jurisdiction over the case, and remanded the case back to the District Court. Then, on January 25, 1974, the District Court requested the Special Prosecutor to file a statement concerning the effect of compliance with the SSC's subpoena for five specified tapes on future actions by the Special Prosecutor's office.

The memorandum filed by the Special Prosecutor on February 6, 1974, reflected a compromise position. While admitting that compliance with the SSC's subpoena would add one more factual incident of pre-trial publicity, but one not nearly sufficient to prevent the court from empanelling an unbiased jury, WSPF took no affirmative stance against enforcement of the subpoena. On February 8, 1974, the District Court declined to enforce the SSC's subpoena and dismissed the litigation. Once again, the Committee appealed the District Court's dismissal and on May 23, 1974, the Court of Appeals affirmed that decision.

⁵ SSC Final Report, July 1974, 93d Cong. 2d Sess., p. 1081.

⁶ Part I, Special Prosecutor Hearings, Senate Judiciary Committee, p. 49.

The SSC was originally scheduled to submit a final report of its findings and recommendations on February 28, 1974. However, in early February it was announced that it would delay its report so as not to prejudice potential jurors in forthcoming trials. Special Prosecutor Jaworski had also expressed concern, in a December 11, 1973, letter to Senator Ervin and in a meeting on January 31, 1974, with Senators Ervin and Baker, that the Report not include factual conclusions, at least insofar as any assessment of criminality of persons who could be defendants in a later jury trial. Also, on February 19, 1974, the SSC voted unanimously to hold no further public hearings to avoid interfering with the House Judiciary Committee's inquiry into the impeachment of Richard Nixon and with the trials of Watergate-related figures. Hearings concerning remaining matters under investigation, including the circumstances surrounding a \$100,000 contribution given by agents of Howard Hughes to the President's friend Charles ("Bebe") Rebozo,⁷ and campaign contributions from the dairy industry, were held in closed sessions.

An important aspect of the relationship between WSPF and the SSC was the exchange of information between the two. Early SSC requests to the Justice Department for access to documents were referred to the Special Prosecutor's office and a procedure was established for the SSC to gain access to some documents in the Special Prosecutor's possession. The SSC submitted to WSPF an inventory of the material collected by the SSC in regard to specific individuals. WSPF would then indicate that it possessed additional documents and from whom the documents were obtained. The SSC would either seek to have a witness consent to their receiving the material or apply for a court order.

WSPF obtained material from the SSC pursuant to an agreement reached between Cox and Ervin in September 1973. Two WSPF attorneys reviewed the SSC's master inventory of witness statements, documents and evidence to locate information necessary for investigations. The SSC then provided some of the materials requested by the Special Prosecutor. Documents were also acquired by means of informal contacts, later confirmed in writing, between staff members of the WSPF and SSC.

In a February 22, 1974, letter to Senator Ervin, Special Prosecutor Jaworski requested access to the SSC's investigative and executive session materials. The SSC complied with the request and also pro-

⁷ The Senate Select Committee undertook an extensive investigation into the Hughes-Rebozo matter. Documents acquired during their investigation were supplied to the Special Prosecutor's office, including interviews and executive session testimony of Rebozo (October 17-18, 1973, March 20-21, 1974, and May 9, 1974).

vided all information on its computer tapes.⁸ WSPF requested not to receive certain immunized testimony (Strachan, De Diego, Martinez and Barker) due to problems that could arise with respect to using "tainted" testimony.

During the spring and summer of 1974, WSPF continued to request documents from the SSC relating (1) to trials it was engaged in (*U.S. v. Chapin*, *U.S. v. Ehrlichman*, *U.S. v. Mitchell*, *U.S. v. Connally*), (2) to SSC investigations such as Hughes-Rebozo, (3) to documents underlying Senator Baker's report on CIA-Watergate connections and (4) to interviews and executive session testimony of numerous individuals.

The SSC's Final Report was released on July 13, 1974, and a few months later the Committee formally closed down operations. Documents acquired by the Committee, however, were still of interest to the Special Prosecutor's office. Pursuant to S. Res. 369, exclusive access to and use of the SSC files was granted to the Senate Rules Committee pending file transfer to the National Archives. WSPF was able to acquire SSC documents through requests to the Senate Rules Committee. In addition, the Senate Rules Committee honored requests by WSPF that certain categories of documents temporarily be withheld from public distribution to protect the rights of individuals involved in upcoming trials or pending investigations.

**The Senate Judiciary Committee,
House Judiciary Committee,
and House Subcommittee on Criminal Justice**

The Senate Judiciary Committee had received assurances from Elliot Richardson during his confirmation hearings in May 1973 that the Special Prosecutor would operate independently and would have full responsibility for investigations under his jurisdiction. Five months later, following the firing of Archibald Cox and the abolition of WSPF, the Senate Judiciary Committee and the House Judiciary Committee's Subcommittee on Criminal Justice considered legislation calling for the appointment of an independent Special Prosecutor. Although no legislation was passed, the introduction of the Special Prosecutor bills and the determination of the two committees to hold hearings on the proposals added to the pressure on President Nixon to reinstate the complete independence of WSPF. A provision was added to the charter stipulating that the Special Prosecutor could not be dismissed without the President's obtaining the consensus of the majority and minority leaders of the House and Senate and the

⁸ SSC Final Report, July 1974, 93d Cong., 2d Sess., p. 1093. SSC cooperation with WSPF on the use of computer data is described in Appendix H of the instant report.

chairmen and ranking minority members of the House and Senate Judiciary Committees.

Prior to considering the Special Prosecutor legislation, which is discussed in Appendix B, the Subcommittee on Criminal Justice, chaired by Congressman William Hungate, heard testimony on legislation to extend the grand jury empanelled on June 5, 1972. This grand jury, which had been investigating the Watergate break-in and cover-up, was due to expire on December 4, 1973, at the end of its regular 18-month term. There was widespread backing for extension of the grand jury's term in order to avoid the delay in completing its investigations which would have resulted if the prosecutors had to present great masses of evidence to a new grand jury.

The Subcommittee favorably reported to the full Committee a bill that extended the June 5, 1972, grand jury for six months and provided for another six month extension if the U.S. District Court for the District of Columbia determined that the business of the grand jury would not be completed by June 4, 1974. The bill was reported by the full Committee to the House and passed by the House of Representatives on November 6, 1973. After Senate approval, the bill was signed by President Nixon on November 30, 1973 (P.L. 93-172).⁹

The Senate Judiciary Committee had virtually no contact with the Special Prosecutor between the hearings on the nomination of Elliot Richardson to be Attorney General and the resignation of Richardson and firing of Cox. After Leon Jaworski's appointment as the second Special Prosecutor, the Committee assumed a guardian posture over WSPF's work. Cox, the first witness at the hearings on the Special Prosecutor bills, had told the Committee of his frustration over White House failure to provide evidence needed in the Watergate investigations. On November 5, Chairman James Eastland wrote to Acting Attorney General Robert Bork to request a list of all materials Cox had requested from the White House and an indication of which materials had been provided and which refused. Bork referred the letter to Jaworski, who sent to Eastland, in confidence, a copy of each request Cox had made and a report on those which had not been met.

When Jaworski testified before the Senate Judiciary Committee on legislative proposals for a special prosecutor, Senator Charles Mathias asked that he submit to the Committee a report on the status of all requests for evidence from the White House. This request was formalized in a letter from the Chairman to Jaworski a week later. Jaworski

⁹ The additional six month extension, determined necessary by the Special Prosecutor's office and the grand jury, was granted by Chief Judge Hart on May 31, 1974. The June 5, 1972, grand jury investigated the Watergate break-in and cover-up until its expiration on December 4, 1974; the members had served longer than any Federal grand jury in the Nation's history.

responded that some items had been received and that discussions with White House counsel over other items were planned. Two months later, Jaworski submitted to the Chairman a full report on the results of the discussions. In March, thanking Jaworski for his February report on the status of efforts to obtain evidence from the White House, Eastland wrote:

We welcome your continued provision to the Committee of any information or advice in the progress of your investigation which you think would be appropriate to the Committee's oversight responsibility or helpful for the performance of the duties with which you have been charged.

In accordance with this, and with Jaworski's pledge to the House Subcommittee on Criminal Justice and the Senate Judiciary Committee that he would inform both committees of White House attempts to limit his jurisdiction and independence, Jaworski wrote to Chairman Eastland on May 20, 1974. In the letter, a copy of which was sent to Chairman Peter Rodino and Ranking Minority Member Edward Hutchinson of the House Judiciary Committee, Jaworski advised Eastland that Presidential counsel James St. Clair, in a closed hearing on Jaworski's subpoena of Presidential tape recordings for use in the Watergate cover-up trial, had claimed that Jaworski, as a member of the executive branch, had no right to subpoena the President. Jaworski reminded Eastland that Alexander Haig, after consulting with the President, had promised Jaworski he would have the right to press legal proceedings against the President. Jaworski reported that Judge Sirica had overruled the White House claim. The next day, May 21, 1974, the Senate Judiciary Committee passed a resolution expressing support for Jaworski's jurisdiction to seek the tape recordings.

Jaworski's claim to the tapes was upheld by the Supreme Court on July 24, 1974. Two weeks later, President Nixon resigned, and on September 8, 1974, he was granted an unconditional pardon by President Ford for all criminal acts he may have committed while he was President. Nixon's resignation led the House of Representatives to drop pending impeachment proceedings, and the pardon was an effective bar to any possible criminal charges against him.

Fearing that all the facts of Nixon's involvement in Watergate would never be revealed, eight members of the Senate Judiciary Committee wrote Jaworski that they felt it was his responsibility to report to Congress fully on the evidence obtained in the course of his investigations, including a full and complete record detailing any involvement of Nixon. Jaworski responded that although the matter was under study, he thought he had no authority to issue such a detailed report.

The Subcommittee on Criminal Justice, which had virtually no contact with the Special Prosecutor following the hearings on

grand jury extension and Special Prosecutor legislation, assumed an oversight posture as to WSPF following the pardon of Richard Nixon. The concern of the Subcommittee that all the evidence relating to former President Nixon's involvement in Watergate would never be revealed led them to seek assurance from the Special Prosecutor that the former President's tapes and documents would remain under White House control until Congress considered legislative proposals to deal with the issue. Jaworski responded in a September 24, 1974, letter to Chairman Hungate that the Special Prosecutor's office had requested the Ford Administration to take no steps to disturb the location or custody of Nixon's tapes and documents. Congress eventually passed, and President Ford signed into law, the Presidential Recordings and Materials Preservation Act (P.L. 93-526) on December 19, 1974.¹⁰

The concern that former President Nixon's full involvement in Watergate would not be revealed also led to the introduction in Congress of a number of bills requiring the Special Prosecutor to publish a report detailing all evidence concerning the involvement of Richard Nixon in any criminal offense. Much of this legislation was introduced in the fall of 1974 following President Ford's pardon of Nixon and referred to the Subcommittee on Criminal Justice. Several sponsors of the proposed legislation appeared before the Subcommittee at that time and were unanimous in stating that their overriding purpose in introducing the legislation was to insure that a complete record of Watergate and its related events be made public. No action on the proposed legislation was taken during the 93d Congress.

On January 30, 1975, at the start of the 94th Congress, the Hungate Subcommittee heard testimony from Special Prosecutor Henry Ruth, former Special Prosecutor Jaworski and James Vorenberg, consultant to the Special Prosecutor, to determine whether such legislation should still be considered. In his testimony, Ruth expressed doubt about the constitutionality of legislation authorizing the dissemination of evidence on Richard Nixon's role in the Watergate affair. He pointed out that it would be impossible for WSPF to comply with such legislation without releasing raw data involving persons other than Nixon and that such a release would violate the legal rights of all those involved. Ruth added that the basic Watergate cover-up evidence against the former President had been made public through the impeachment proceedings, the hearings of the Senate Select Committee on Presidential Campaign Activities, and the trials of Watergate-related figures.

¹⁰ The law directs the General Services Administration to make public all papers bearing on Presidential abuses of power. Former President Nixon is contesting the constitutionality of this law, claiming that the papers are his property.

Jaworski and Vorenberg supported Ruth's position in their testimony. Jaworski, expanding on his earlier response to the Senate Judiciary Committee about a detailed report, stated that he did not believe that the release of a report on matters that did not involve the filing of charges was part of the prosecution function. Vorenberg concurred, stating that the only way a prosecutor ought to speak about individuals under investigation was through the grand jury and a formal indictment. If an investigation did not lead to that, it would be a violation of an individual's rights for a prosecutor to disclose the information he had gathered.

In light of the arguments by the prosecutors against the proposed bills that would require release of raw investigative files, the Subcommittee on Criminal Justice decided not to proceed with legislation that would specify what WSPF reports should contain.

In July 1975, the Subcommittee on Criminal Justice requested Ruth to testify concerning the termination of the office and publicized allegations that remained unresolved. The session was closed to the public to protect the rights of persons who may have been investigated but not indicted. In his publicly released opening statement, Congressman Hungate stated that the purpose of the meeting was ". . . to fulfill [the Subcommittee's] oversight responsibility and to satisfy the legitimate concern of the public and the Congress that a complete and thorough investigation has been conducted." The Subcommittee, he said, also sought ". . . to insure that the Special Prosecutor's final report will be as complete an account of Watergate as possible without prejudicing or injuring the rights of innocent persons and that it will be widely available to the public."

Special Prosecutor Ruth responded to the Subcommittee's questions concerning the termination of the Special Prosecutor's office, the thoroughness of investigations, the composition of the final report and the disposition of documents and other evidence.

Relations With Other Law Enforcement Agencies

FEDERAL INVESTIGATIVE AGENCIES

Federal Bureau of Investigation (FBI)

At the time Cox was appointed Special Prosecutor, the FBI had been working on various aspects of the Watergate break-in and cover-up for almost a year. One of Cox's most difficult early decisions was whether to use the FBI as his principal investigative arm or to hire his own investigative staff. This required him to determine, at an early stage of his investigation, how thorough the original FBI investigation had been, the extent of FBI involvement, if any, in the Watergate cover-up and whether such involvement was so extensive and so pervasive as to prevent the FBI from continuing the investigation under the new Special Prosecutor.

The FBI's possible involvement in many of the matters under investigation by the new Special Prosecutor was, by the time of Cox's appointment, a subject of public debate. Already on the public record were disclosures that former Acting FBI Director, L. Patrick Gray, had destroyed documents from E. Howard Hunt's White House safe, reports of White House interference in the Watergate investigation and attempts to halt the investigation on bogus national security grounds, the intimidating presence of White House lawyers during FBI interviews with White House and CRP staff members, copies of FBI investigative reports sent to the White House, questionable wire-tapping requests to the FBI by White House officials, requests for FBI investigations of White House "enemies," and hints of other questionable actions by former FBI Director J. Edgar Hoover. James McCord, one of the Watergate burglars, implied that there might be trouble with the FBI when he said in his March 23, 1973, letter to Judge Sirica that he was writing because "I cannot feel confident in talking with an FBI agent."

On May 30, 1973, shortly after arriving in Washington to take up his duties as Special Prosecutor, Cox sent a memorandum to the Director of the FBI requesting a full rundown on all FBI actions pertaining to Watergate. This request asked for a specific description of all investigations on matters within his jurisdiction, a full chronological account of all internal requests or instructions about the Watergate investigation, a list of all communications within the Justice Department on the Watergate investigation, any communications between the White House and the FBI on Watergate, and a chronological listing of all contacts between the FBI and the CIA concerning Watergate.

Cox wished to learn about the FBI's role in the Watergate investigation in order to make an informed judgment whether or not the FBI had participated in the cover-up of the Watergate affair or had succumbed to outside pressure and had not been diligent in pursuing the investigation.

One proposal, considered in the first few days of WSPF, called for the hiring of ten staff investigators who could report directly to the Special Prosecutor. However, after Cox weighed all the evidence, including the FBI's memorandum in response to his request, he decided to continue use of the FBI to conduct investigations under the direction of WSPF prosecutors if he could develop satisfactory working arrangements with the Bureau.

One important factor in this decision was the appointment of William Ruckelshaus as Acting Director of the FBI after Gray's resignation. Ruckelshaus was not tainted in any way by earlier alleged misconduct within the Bureau, and he was forthright and helpful in his dealings with the new Prosecutor. There also appeared to be no basis for doubting the integrity or diligence of the agents who had actually conducted the investigations to date and who would presumably be the ones to continue this work under the direction of the Special Prosecutor.

Furthermore, Cox took account of the fact that the FBI (1) had become familiar with most aspects of the earlier investigations, (2) had conducted interviews with most of the participants, (3) had the resources and broad investigative experience to conduct the Special Prosecutor's investigations with maximum efficiency and least additional financial burden to the Government, and (4) had agents in all parts of the country. If the Special Prosecutor had hired his own investigators, they would be going over the same ground, for the foreseeable future, that the FBI had already covered. Also, staff investigators hired by and reporting directly to the Special Prosecutor might prove difficult to supervise as they moved around the country conducting investigations in the name of the Watergate Prosecutor. Using the FBI, in short, avoided duplication and seemed to make it more

likely that investigators would be experienced, responsible and familiar with the geographical area in which they were working.

A number of meetings were held with FBI officials in June 1973 to discuss arrangements for the FBI's continued participation. WSPF was anxious to avoid having investigative requests and the results of investigations follow normal FBI channels through the Department of Justice. There had been too much interference with FBI operations during the early phase of the original investigation, and WSPF recognized that even without future interference there would be special problems since past actions of the Bureau would be involved in the investigations. Cox obtained agreement that written investigative requests would proceed directly from WSPF to the FBI, and written FBI investigative reports would proceed directly back to WSPF. In addition, WSPF attorneys could deal directly with individual FBI agents rather than having to request further work only through normal FBI supervisory channels. Finally, the FBI agreed to expedite all work for the Special Prosecutor, and no reports would be sent to the Attorney General unless the Special Prosecutor so approved in matters of possible overlap with Criminal Division responsibilities.

While office interviews of witnesses and prospective defendants were conducted by WSPF staff attorneys, most field interviews were conducted by FBI agents.¹ Agents from the Washington Field Office continued to work on the Watergate cover-up investigation and maintained a close working relationship with the WSPF staff. Other interviews, requests for assistance in locating persons, checking addresses and telephone numbers, and locating and gaining access to various documents were also performed by agents in other field offices.

The FBI also was asked to provide fingerprint analyses, to conduct laboratory tests, and, on a number of occasions, to perform polygraph examinations for WSPF. Although, as indicated above, WSPF had authority to make requests directly to FBI agents working on investigations, most requests in areas other than the cover-up investigation were made through memoranda to the FBI Director. Other requests were made more informally by telephone to agents of the Washington Field Office and later confirmed by memoranda.

In a few matters, assessment of the conduct of FBI agents was part of WSPF's investigative task. In these cases, the investigating attorneys handled the matter exclusively in the grand jury or special arrangements were made with the Director of the FBI for any investigative assistance. Some of these matters were also under investigation by the Inspections Division of the Bureau and these dual responsibilities required coordination. For example, in WSPF's inquiry into

¹ The investigative process is described in Chapter 2 of this report.

the national security wiretap program, which was implemented by the FBI at the direction of the White House and the Attorney General, the Special Prosecutor arranged with Director Kelley of the Bureau to use the FBI's General Investigative Division rather than the Intelligence Division which normally conducts national security investigations, but which housed some of the personnel through whom the White House wiretap program had proceeded. This investigative procedure avoided any conflict of interest, or appearance thereof, that otherwise might have clouded the required thoroughness and cooperation.

In summary, although the FBI was not involved in some of the investigations WSPF conducted, and played only a small part in others, its work in the great majority of individual matters investigated by WSPF was quite extensive. In all, agents from 58 of the Bureau's 59 field offices conducted more than 2600 interviews at the Special Prosecutor's request. This work included FBI employees in several of the FBI "legal attache" offices overseas.

Internal Revenue Service

Continuing liaison developed during the summer of 1973 between the Internal Revenue Service (IRS) and the Special Prosecutor's office. The relations pertained for the most part to three areas of joint interest.

First, IRS commenced its own project to ferret out any tax violations committed by donors or recipients of campaign contributions, primarily in the 1972 Presidential campaign. For example, corporations that used corporate funds for such contributions may have deducted that expense improperly from their gross income. Other contributions may have involved evasion of gift tax laws, and recipients who used contributions for personal expenses may have owed income tax on such funds. As WSPF developed its own investigations, the sharing of information with IRS became a daily event. When WSPF agreed to accept a guilty plea from an individual or corporation in a campaign contribution case, prosecutors insisted that the defendant corporation disclose all corporate contributions to candidates for Federal office within the period of the applicable statute of limitations; and the Special Prosecutor also required disclosure of the basic method each defendant had used to generate the contributed funds, including cash accumulations in "slush funds" (usually from overseas sources) and the use of bonus payments and expense accounts to reimburse employees for contributions made in their own names. Most of the guilty pleas from corporate or individual defendants did not relieve the defendants from civil and criminal liability under the tax laws. As a result, WSPF furnished IRS with great quantities of information that IRS then used in their campaign contribution project.

The second area of WSPF-IRS cooperation was the tax agency's project to audit the tax returns of individuals who received accumulations of cash during the Watergate years. The IRS agents sought to determine whether or not any of the cash was converted to personal use and not reported as income on the relevant individual's tax return.

Finally, the Special Prosecutor's office used IRS as the principal investigators in some of the major investigative matters. Two of these are described in Chapter 3 of this report: the Hughes-Rebozo allegations and the inquiry into the conduct of those who participated in President Nixon's alleged gift of pre-Presidential papers and in the related large tax deduction taken by Mr. Nixon for the alleged gift.

When IRS completed a criminal tax investigation and recommended either further grand jury action or prosecution, the case was sent to WSPF which could decide either to handle the tax case within the Special Prosecutor's office or forward it to the Tax Division of the Department of Justice. The case involving President Nixon's tax returns was specifically delegated to WSPF by the IRS Commissioner and by the Attorney General for grand jury investigation; however, other tax cases were forwarded by WSPF to the Tax Division for consideration under their usual policies for tax prosecutions.

The Special Prosecutor requested, and the IRS Commissioner agreed to, the assignment of an IRS agent directly to the WSPF staff. Anthony Passaretti of New York—who had worked with WSPF attorneys previously employed in a U.S. Attorney's office—was assigned in June 1974 to assist the prosecutors in a number of investigations. Several other IRS agents were placed on temporary duty at WSPF. These agents assisted attorneys in identifying possible approaches to investigations or furnishing professional auditing assistance to pinpoint possible areas of illegal activity.

Passaretti worked closely with attorneys in the Campaign Contributions Task Force and helped other task forces to trace cash flows, investigate Federal income tax returns and examine bank records. He developed for the Watergate Task Force a chart showing the flow of so-called "hush money" as it passed from officials of the Committee to Re-Elect the President and White House staff members through intermediaries to the original Watergate defendants. He was a witness for the Government in *United States v. Mitchell et al.*, testifying on the flow of this money.

Part of the investigative work of WSPF required the use of Federal income tax returns. These were supplied to the office by IRS with the approval of the Attorney General. Within the Special Prosecutor's office, access to these returns was limited to those attorneys actively engaged in the investigation on a "need-to-know" basis.

In order to permit IRS agents to review grand jury testimony for possible investigative leads, court orders authorizing such disclosure

under Rule 6(e) of the Federal Rules of Criminal Procedure were obtained.

RELATIONSHIPS WITH OTHER PROSECUTORS

United States Attorneys²

On May 31, 1973, at Cox's request, Attorney General Elliot Richardson issued a directive to all Department of Justice personnel advising them of the creation of the Office of Watergate Special Prosecution Force and the appointment of Archibald Cox as Special Prosecutor in charge of that office. The directive stated:

Effective immediately, all Divisions, Offices, Services, and Bureaus of the Department, including the Federal Bureau of Investigation and all United States Attorneys, will report to and cooperate with the Special Prosecutor on all matters within his jurisdiction.

The Special Prosecutor's jurisdiction included offenses arising out of the unauthorized entry into Democratic National Committee Headquarters on June 17, 1972, all offenses arising out of the 1972 Presidential election over which the Special Prosecutor deemed it necessary and appropriate to assume responsibility, and allegations involving the President, members of the White House staff, or Presidential appointees. Department employees were directed to make prompt written reports to the Special Prosecutor on all allegations, pending investigations, or pending cases falling within these categories. Those working on any such matters were directed to continue their work but to consult with the Special Prosecutor before making any significant decisions and to furnish copies of their investigative files to the Special Prosecutor's office.

Several of the major investigations and pending cases which became the Special Prosecutor's responsibility came to him from United States Attorney's offices. The office for the District of Columbia was handling post-trial issues involving the seven men who had been convicted of the Watergate break-in and was investigating the alleged cover-up by high officials of the White House and the President's 1972 campaign committee. In addition, that office had begun an investigation into evidence suggesting that White House officials had been responsible for a break-in at the office of Dr. Lewis Fielding, the psychiatrist of antiwar activist Daniel Ellsberg.

The U.S. Attorney's office for the Southern District of New York had obtained an indictment of former CRP chairman John Mitchell,

² WSPF's relationship with the United States Attorney's office for the District of Columbia is covered separately in Appendix C. WSPF also had extensive contact with the Criminal Division of the Department of Justice, as described in Appendix D.

CRP finance chairman Maurice Stans, financier Robert Vesco, and Vesco associate Harry Sears. The indictment, returned on May 10, 1973, charged that Mitchell, Stans and Sears conspired to influence a Securities and Exchange Commission fraud investigation of Robert Vesco in exchange for Vesco's secret \$200,000 contribution to CRP. An indictment of Donald Segretti and George Hearing for distributing fraudulent campaign materials had been obtained by the U.S. Attorney's office for the Middle District of Florida on May 4, 1973. Other U.S. Attorneys' offices had opened investigations into possible illegal campaign contributions.

Under WSPF's charter, Cox had authority to determine whether to leave these investigations and cases in the hands of the U.S. Attorneys under his general supervision, or to transfer them to his own staff. By mid-June 1973, Cox or one of his senior aides had discussed each of these matters with the U.S. Attorneys' offices involved. Cox decided that he should take over the Segretti case³ and most of the campaign contributions investigations. Among the considerations that led to this decision were the fact that the Special Prosecutor's office was better situated than the U.S. Attorneys' offices to determine the extent to which each of these matters was part of a broader operation, WSPF attorneys could proceed in any district in the United States, and the principal witnesses to question and documents to examine were located in Washington. Furthermore, the U.S. Attorneys' offices were only at early stages in their investigations of many of those matters.

In the Vesco case, however, the U.S. Attorney for the Southern District of New York was preparing for trial of the case by the time WSPF was created. Therefore, after discussions between representatives of the two offices, Cox decided to leave direct responsibility for the case with the U.S. Attorney.

Throughout WSPF's existence, office attorneys had innumerable contacts with other U.S. Attorneys throughout the Nation. Office attorneys conducted grand jury hearings in several districts outside Washington, D.C., and each of the U.S. Attorney's offices cooperated in making the necessary arrangements. On a few occasions, a U.S. Attorney would receive information about a possible criminal act within the Special Prosecutor's jurisdiction and WSPF would decide whether to take jurisdiction. In some campaign contribution matters, when the contribution allegation was part of a larger investigation already well underway in the U.S. Attorney's office, the Special Prosecutor decided not to bifurcate the investigatory process and told the U.S. Attorney to proceed while keeping WSPF informed of progress in the matter.

³ George Hearing's case was handled by the U.S. Attorney's office for the Middle District of Florida.

As of August 1975, WSPF investigations had produced eleven indictments not finally resolved through guilty pleas. Of the eleven trials that were necessary, six were held in Washington, D.C., and the other five were held, or are scheduled to be held as this report is written, in New York City, N.Y.; San Antonio, Texas; Los Angeles, California; Minneapolis, Minn.; and Chicago, Illinois. In each case, the U.S. Attorney extended full cooperation; and in the conviction of Jack Chestnut, a dairy industry contributions matter, the Office of the United States Attorney for the Southern District of New York conducted the trial at WSPF's request and obtained Chestnut's conviction.

State Prosecutors

At the time WSPF was created, Richard Gerstein, State's attorney for Dade County, Florida, was inquiring into allegations that the Watergate break-in was actually planned in Dade County in violation of State laws; and Joseph P. Busch, District Attorney of Los Angeles County, California, had undertaken an investigation of the Fielding break-in which led to the September 4, 1973, indictment of John Ehrlichman, Egil Krogh, Jr., G. Gordon Liddy, and David R. Young.

Gerstein began his inquiry into the Watergate break-in not long after the FBI began its investigation. He believed that certain actions leading to the break-in occurred in Dade County and his office therefore had jurisdiction over aspects of the case. He acquired records, cancelled checks and bank statements from Federal authorities as part of his investigation.

Since the Watergate break-in and the alleged cover-up were the most important responsibilities of WSPF, the Special Prosecutor was concerned lest action by Gerstein relating to events in Florida might impede the investigation and prosecution of the case as a whole.

Gerstein made several trips to Washington to confer with attorneys in the Special Prosecutor's office. In January 1974, as the tapes hearings ended and the office neared indictments in the Watergate case, the new Special Prosecutor wrote to Gerstein warning him about the dangers of any action on the State level.

At this late date, any indictment and prosecution in Florida touching upon matters now under consideration by the Federal grand jury might interfere with potential Federal prosecutions. There would be risk of difficulty and confusion in the handling of evidence, and the interrogation of witnesses. Also, there might be problems of double jeopardy.

I fully appreciate your responsibility for investigating and prosecuting violations of Florida law. Nevertheless, because the activity on which you are focusing is only a part of the activity under investigation by this office and the Federal grand jury, I believe this would be an appropriate case for you to defer to

Federal jurisdiction, at least in the first instance. I do not overlook the problems you face under the Florida statute of limitations, but, as I indicated today, the Federal investigation should be completed sufficiently in advance of your deadline to allow you to take whatever action you deem appropriate after the Federal grand jury concludes its investigation. Accordingly, I renew my request that you continue to defer any action until that time.

The letter and subsequent conversations with the Dade County State's attorney resulted in his deferring to the Federal grand jury in Washington.

The Los Angeles County investigation into the break-in at the office of Dr. Lewis Fielding began before the appointment of a Special Prosecutor. After Los Angeles County indictments were returned on September 4, 1973, the Special Prosecutor issued a statement in which he made clear that the "Federal interest" in the Fielding break-in predominated:

This office has, from its beginning, been investigating the events leading to the break-in at Dr. Fielding's office, both specifically and as part of a wider inquiry into other possibly illegal activities purportedly undertaken in the name of "national security."

In our view the Federal interest in dealing with any possible illegal activities by White House employees is clearly predominant.

The statement expressed confidence "that ways can be found of avoiding conflict and confusion while the Federal investigation and prosecution of any resulting indictments go forward."

The California case went forward on its own schedule, and defendant G. Gordon Liddy was transferred from the D.C. jail to California to await trial. When the Federal grand jury in Washington handed up indictments in the case on March 7, 1974, District Attorney Busch came to Washington, met with Jaworski, and agreed to seek court dismissal of the indictments pending against Krogh, Liddy and Young. He wished to retain a perjury charge against Ehrlichman, however, and Jaworski expressed no objection.

After their meeting Busch and Jaworski issued a joint statement announcing the dismissal:

As a result of these discussions and for reasons assigned by the Special Prosecutor, District Attorney Busch has agreed to seek dismissal of the charges of conspiracy and burglary as to David R. Young, John Ehrlichman and G. Gordon Liddy. Among the reasons given for seeking to dismiss are that many of these issues involve matters of national interest and, therefore, would best be decided in the Federal court system. Also, the two indictments would be exposing defendants to trial in two different jurisdictions and, in fairness to those defendants charged in both jurisdictions and in the interest of justice, they should be tried in one jurisdiction. The perjury charge as to John Ehrlichman in Los Angeles County will remain. It invokes protection solely of a State interest. Mr. Jaworski expressed his deep appreciation to

Mr. Busch and his staff for their cooperation in resolving these matters.

The perjury charge was dismissed in Los Angeles after sentencing in *United States v. Mitchell, et al.*, on February 21, 1975.

* * * * *

In addition to the relations described above, WSPF also received extensive help from other Federal agencies. Several of the regulatory agencies were requested to furnish information related to WSPF investigations of campaign contributions, and office attorneys were permitted access to relevant files. In addition, when WSPF completed a case wherein the subject matter was of interest to a regulatory agency, pertinent information was furnished to them. For example, the Campaign Contributions Task Force had close liaison with the Securities and Exchange Commission which investigated and brought subsequent proceedings against many of the corporations which had pleaded guilty in WSPF cases.

Support assistance in connection with witness security, witness transportation and witness availability was received on an intensive basis from the Bureau of Prisons and the United States Marshals Service, both agencies within the Department of Justice. The leadership and personnel of both these agencies were always cooperative and helpful to WSPF attorneys.

Finally, officers from the Federal Protective Service (part of the General Services Administration) served as guards and general keepers of the security at WSPF's offices. Officers were on duty 24 hours each day, seven days each week throughout WSPF's existence. The security arrangements were under the supervision of Winslow Joy of the Department of Justice.* They maintained the security without flaw.

Press Relations

By the time of Archibald Cox's appointment as Special Prosecutor, "Watergate" had become the major journalistic event in the Nation. The Senate Select Committee hearings, which had begun a week earlier, were covered live daily by the major networks, enabling millions of Americans to witness the unfolding of the scandal. Inspired or embarrassed by the persistent investigative reports of the *Washington Post*, many reporters assigned to cover the affair scrambled frantically in the competition to discover and reveal new examples of executive branch misdeeds. Although Cox realized that his obligations as a prosecutor would necessarily require that he conduct his work in utmost confidentiality and that there would be little he could say to the press, he decided early in his tenure to establish a public affairs office to handle what was certain to be a massive volume of inquiries from the press and the public.

Cox was mindful of the national concern over Watergate and of the public's right to be kept as fully informed as possible about the work of his office. "The public deserves as much accurate information as is consistent with the sometimes severe constraints placed on prosecutors as officers of the court," he said when he announced the establishment of the Public Affairs Office. In addition to observing these constraints, it was important to demonstrate the professional competence and integrity of the office by maintaining the confidentiality of information received in office interviews and grand jury appearances. It was also important to instill confidence on the part of potential witnesses that their dealings with the office would not be subjected to unwarranted or premature public disclosure.

At the time, a number of news stories had appeared—attributed to sources in both the legislative and executive branches—which purported to detail allegations against various figures linked to Watergate. Cox was determined that his office would have no part in adding to speculation concerning his work. His initial success in this endeavor was described by the *New York Times*, which reported on May 31:

An imposed silence fell over the Watergate criminal investigation today as Archibald Cox, the special prosecutor, and his staff began reviewing the case.

Mr. Cox seemed to be clearly in charge. His order to refrain from any kind of statement, comment or speculation about any aspect of the investigation was being followed by usually talkative sources in the Justice Department.

In a memorandum to the staff dated August 15, Cox formalized the office policy concerning press relations. "Aside from the normal restraints on a prosecutor, we have the added problems of the explosive nature of the matters we deal with, and the extra competitive strain on many of the reporters who cover us," the memorandum noted. No one other than Cox, his task force heads and members of the senior staff were expected to talk to reporters, and then only rarely. No attorney had permission to submit to an interview without clearance from the public information officer. As a general rule, only the Special Prosecutor or his official spokesman was expected to represent office policy to the press.¹

The public information office decided at the outset that it would attempt to handle press inquiries and press problems on an individual basis whenever possible, avoiding general press briefings and press releases. This meant that the number of telephone inquiries each day multiplied, but most of the 45 reporters who covered the office at the height of public interest approved of a system in which they were handled separately, even if it meant waiting several hours in some cases before their inquiries were answered. The number of daily telephone calls sometimes ran to more than 200. A major effort was made in the early weeks to convince reporters that the office intended to be "leakproof" and most reporters approved of this policy, providing it was adhered to. Partly because of severe space problems, there was no press room at 1425 K Street. Newsmen were discouraged from coming to the offices without an appointment, and only on rare occasions was a camera crew stakeout rewarded with an interview by either a staff member or a visitor to the office. Often extra effort was made to avoid such interviews by having individuals leave the building through a side exit.

The basic guidelines for the Special Prosecutor's relations with the press were judicial orders, regulations, and professional standards adopted by the U.S. District Court, the Department of Justice, and the American Bar Association. Once indictments were returned, the attorneys and the public information office usually chose to err on

¹ "We have made it a general rule," the August 15 memorandum noted, "that we do not wish to have information disseminated as from a 'source close to the prosecution' or any similar euphemism which makes it clear that it comes from this office but that it is given anonymously. This device is sometimes used by diplomats and others who wish to disseminate information but avoid the embarrassment of admitting that they are the source. We are not in such a position."

the side of caution and say nothing that could be construed as an extrajudicial statement concerning a pending case.

On the other hand, to give the public as much information as possible about the Special Prosecutor's office in the early stages of their work, both Special Prosecutors Cox and Jaworski made themselves available to reporters at occasional news conferences and in formal interviews in their offices or at television studios. A number of less formal visits were arranged with individual newsmen or news organizations as a means of accommodating the intense media interest in the work of the office. In each case, it was understood in advance that no confidential material would be disclosed.

The secrecy with which the Special Prosecutor's office operated appeared to the press at times excessive. Some members of the press were especially dissatisfied with what seemed to be excessive secrecy surrounding court proceedings in which WSPF was involved—the sealing of court documents, lack of detail in court papers and failure to disclose fully what alleged offenses were disposed of through negotiated guilty pleas. More generally, the notoriety of the cases brought by the office, the massive press and public interest in the outcome of the office's investigations, the amount of evidentiary material laid out on the public record by the Senate Select Committee and others, and the President's possible personal involvement created intense pressure to find out what was going on behind the heavily guarded entrance to the Special Prosecutor's office. This pressure worried prosecutors who were not used to operating under such intense public scrutiny and who were concerned that massive publicity could jeopardize the cases they had laboriously and carefully investigated.

Many reporters covering the office felt that the "legal considerations" advanced for secrecy did not justify denying them information to which they felt entitled. As one reporter put it:

I think your office has put together one of the best bands of lawyers this town has ever known, but they are still government lawyers and they think like government lawyers. And government lawyers, and other Washington lawyers, got us into this mess in the first place. So I think in this area of cases above all, we need to know more about the way government lawyers think and why they decide to do things and not to do things. Lawyers don't like to talk about those things and over the years they have developed all sorts of fancy reasons not to. And since congressmen (mostly) and judges (entirely)—the only ones with subpoena powers—are lawyers too, nobody can make them. But I think you ought to be prepared to explain your decisions. And if you're not, you ought to be prepared to explain why you're not.

Most Government agencies (like other organizations) are affected by leaks, which usually result from attempts by individuals within the agency to explain or defend their actions or to ingratiate them-

selves with journalists, and from good detective work by newsmen. The Watergate Special Prosecution Force had two particular concerns about leaks: that they would create prejudicial publicity which might jeopardize investigations and prosecutions, and that they would reflect poorly on the professionalism and the impartiality of the staff.

Fortunately, WSPF experienced very few suspected leaks. In August 1973, it was discovered that some information discarded as trash had made its way to the *Washington Post*. A shredder was purchased to prevent any such experience in the future. In three other situations (one in the summer of 1973, one in early 1974, and the last in early 1975), stories appeared which some thought might have originated at least indirectly from WSPF staff members. As a result, in an attempt to ascertain the source of the stories, the Special Prosecutor directed that all employees who had access to the information sign affidavits as to any discussions they may have had with reporters. No improprieties were discovered.

Apart from dealing with representatives of the news media, the public information office handled relations with its counterparts at the Department of Justice and the White House. Relations with the Justice Department's Office of Public Information (PIO) were kept friendly but distant in order to emphasize WSPF's independence. While the offices frequently consulted on press inquiries of mutual concern, neither attempted to go beyond this level. Justice PIO did not supervise the prosecution force PIO and neither discussed with the other any dealings which the Special Prosecutor might be having with the Attorney General or other departmental officials.

Relations with the White House press office were almost non-existent during the Nixon Administration. Some members of the White House staff who had frequent dealings with the press often attacked the prosecution staff, usually on a background basis not directly attributable to the quoted party. WSPF responded to reporters regarding these criticisms, but rarely contacted White House staff members. In one instance, however, Special Prosecutor Jaworski wrote to White House press secretary Ronald Ziegler to refute Ziegler's public inference that the WSPF staff was acting from politically partisan motives.

Relations with the White House press office during the Ford Administration were friendly but infrequent.

Information Section

WSPF created an Information Section to provide a computerized information retrieval system from a data base consisting of sworn testimony, office interviews and documentary evidence. In addition to its computer-based functions, the Information Section served as a centralized paralegal staff used for individual projects in each of WSPF's task forces.

EARLY HISTORY

One of the major problems facing WSPF attorneys in the summer of 1973 was assimilating the enormous—and increasing—volume of information available both on the public record and in private documents concerning the subject matter of many of the office's investigations. Special Prosecutor Cox, aware that the flow of information into the office was too great to be collated and analyzed by his prosecutors, established an Information Section to pull together the material already available and to prepare for an even greater volume of testimony and documentary information as the staff and the scope of investigations expanded.

Lawyers' Summaries

In late June 1973, the Information Section consisted of ten recent law school graduates who manually summarized grand jury, civil, and Congressional testimony. They worked 60 to 70 hours a week, concentrating on testimony given before the Senate Select Committee on Presidential Campaign Activities (SSC). The changing requirements of WSPF task forces often shifted the information needs from one witness or event to another, and thus aggravated the difficulties caused by the heavy volume of testimony. By late July the young lawyers, who had been told that this would be a temporary assignment and who had become dissatisfied with the tedium and the changing demands put upon them, were reassigned to task forces and to the Counsel's staff.

Planning for Computerization

While the summarizing project was still in process, Harry Bratt, an administrator with previous experience in computer systems, had been detailed from the Law Enforcement Assistance Administration to study the possibility of establishing a computer operation to handle the volume of information. Assisted by a research analyst with paralegal experience and a lawyer with computer expertise, Bratt began evaluating computer systems, particularly the testimony abstraction system used by the Senate Select Committee.

It was evident that WSPF would encounter certain problems in undertaking a computerized information retrieval system—the need for security, the shifting nature of prosecutors' information requirements, attorneys' traditional maintenance of files and records according to their individual styles, and lack of use or trust by attorneys as to computer operations. Bratt recommended undertaking such an operation only if arrangements could be made for a joint effort with the Select Committee.

The SSC staff agreed to show WSPF all aspects of the Committee's computer operation and to assist in developing a system for the Prosecution Force. WSPF and SSC staffs also agreed, subject to the Committee's approval, that if WSPF decided to undertake computerization they would provide to each other all computer records their staffs prepared from publicly available material.¹

The Library of Congress, which developed and maintained the SSC's computer system, agreed to provide a similar service for WSPF on a cost reimbursable basis, after obtaining approval to engage in a non-Congressional project. The Library's facilities provided the advantages of a high level of security and rapid start-up time gained from utilizing the SSC's already operational system. On this basis, Cox approved undertaking a computer operation similar to the Select Committee's, and Bratt was formally hired to head the operation.

¹ The Committee subsequently approved this agreement and allowed WSPF to copy the computer tape containing its records prepared from the Committee's public hearings. As additional public materials—press clippings and other public testimony—were computerized, the Committee provided updated tapes. Later, the Committee gave WSPF a copy of the computer tape of its records prepared from non-public materials—its staff interviews, its Executive Session hearings, and some telephone records and diaries which the Committee had acquired. Subsequently, much of this non-public material was made public in the SSC's final report. WSPF eventually computerized several diaries and, since the Committee also had acquired copies of them, provided a computer tape of the records prepared from the diaries to the Committee. All other material computerized by WSPF was prepared from non-public materials which the Committee did not already have and hence was not provided to the Committee.

Organization of WSPF's Computer System

After some staff discussion and disagreements, Cox decided that grand jury testimony and WSPF and FBI interviews would be given computer input priority over the diaries, logs and other documentary evidence available from witnesses. By August 27, a list of the most important witnesses had been prepared with highest priorities reserved for testimony and statements concerning the Fielding break-in, the break-in of DNC headquarters at the Watergate Office Building, and the efforts to conceal the connection between those who performed these break-ins and White House and CRP officials.

A computer input format, similar to that used by the Select Committee, was developed. It contained the following fields ²:

1. Record number.
2. Name of witness; date of testimony or interview; and a computer sort number based on date of testimony or interview.
3. Forum (grand jury, WSPF interview, or FBI interview); and page(s) of transcript or interview write-up on which the witness' testimony or statements about an event were located.
4. Summary of testimony or statements about an event; and name of person who summarized it.
5. Comment; name of commentator; and date of comment (this allowed the summarizer or anyone else to point out conflicts between different accounts of the same event, to note information such as the date of the event or persons involved in it when the witness did not explicitly state them, and so forth).
6. Name of person involved in the event; date of event; and a sort number based on date of event (there would be an entry in this field for each person involved in the event).
7. Subject code (as many entries in this field as broad subjects to which the event related—Watergate, campaign contributions, etc.).

This input format allowed retrieval of information from the computer data base in the following ways:

1. Records of statements by a certain witness.
2. Records about events relating to a certain person.
3. Records about events relating to a certain topic.
4. Records about events in which statements were attributed to a certain person.
5. Records containing any key word or phrase or combination of key words or phrases.

² A "field" is a length of characters which always represents the same type of information, e.g., the computer date field "750416" has a length of six characters and always represents the date by year (2 characters), month (2 characters), and day (2 characters). The information in the field may change from record to record, but this particular field always represents the date.

Other retrievals and combinations of retrievals were possible, and all of the records retrieved could be sorted to print in chronological order.

WSPF contracted with the Library of Congress for systems analysis and processing, and the Library agreed to provide the services of a senior systems analyst, programmers, and operations personnel on a cost-reimbursable basis.³ Two evenings each week were reserved for processing WSPF's data files. To accommodate security requirements, the Library scheduled these computer runs between midnight and 8 a.m., when all on-line (teleprocessing) terminals to the computers were shut off, and arranged that no other processing would be performed while WSPF data were being processed. As a further precaution, it was agreed that only the computer operator and a representative of WSPF would be allowed in the computer room during the computer runs. The Library also permitted WSPF to install a safe, to which only WSPF staff had the combination, in a vault at the Library for storage of tapes, disc packs, and print ribbons. All printouts, carbons, and key punch cards were to be taken back to the WSPF office after each computer run.

In mid-August the Select Committee's information staff provided a two-week training course for the first four research analysts hired and in early September they began preparing input records. Input records were typed on key-to-tape machines. The tapes were later converted to computer readable form.

For its own operation, WSPF's Information Section decided to make several changes in the SSC's input procedures. WSPF assigned a research analyst all of a witness' testimony and other statements to abstract—rather than splitting transcripts and shifting assignments to meet immediate priorities as the Committee's staff did. Also, WSPF required abstraction of testimony in much greater detail than did the Select Committee. The Information Section felt that it should not judge what was or was not important in a witness' response to a question, knowing that frequently a point made by a witness or a vague remark which seems insignificant in one context could be very significant in another context or to another questioner.

The Information Section also decided to institute a quality control check for all records prepared for computer input. Few if any of the prosecutors hired by WSPF had worked with a paralegal staff or had used computerized methods, and therefore the accuracy of the data was critical to the section's ability to convince the prosecutors of the usefulness of computer services. Senior research analysts reviewed all records against the transcripts.

³ The computer contract with the Library cost \$100,000 over a two-year period. This figure excludes Information Section salary and expense costs.

The Select Committee's input procedures allowed very quick "turnaround time"—the time between receiving transcripts to abstract and having records in the computer—and the Committee staff used printouts of statements by a witness and of references to him for questioning that witness in public session hearings. Under the procedures adopted by the Information Section, particularly the detail and quality control requirements, the turnaround time was considerably lengthened.

In the fall of 1973 additional staff was hired for the Information Section. Eventually a staff of two reviewers, six research analysts and two typists seemed to provide a balanced flow of work for testimony abstraction. By mid-winter, with the added staff and the resolution of procedural questions, the Section could prepare approximately 900 records for computer input each month.⁴

ACTIVITIES OF THE INFORMATION SECTION

Computerization of Testimony and Other Witness Statements

For its first project the Information Section abstracted and computerized testimony and other statements of people with knowledge of the Fielding break-in or the Watergate cover-up. The section developed a goal of completing this project in time to aid the Plumbers and Watergate Task Forces in their preparation for indictments and trial. In fact, completion could not be accomplished until after the indictments had occurred, but well before the trial dates.

By May 1974 virtually all relevant grand jury testimony, office interviews, and other statements by defendants and major witnesses in the Fielding break-in case had been abstracted and entered in the computer. By late May, the project produced chronological printouts of all statements by each defendant and major witness and cross-reference printouts of what each of these people had said about the others. A lawyer from the trial team prepared a list of significant events to be proved at the trial, and the research analysts determined the various accounts of these events by each witness and defendant and noted any discrepancies therein. The chronological printouts, cross-reference printouts, and analyses were provided to the trial team as aids in reviewing with witnesses what they would be questioned about at the trial and in evaluating the defendants' expected

⁴ Roughly, 150 pages of testimony produced 100 records. Under WSPF's input procedures, each research analyst could abstract approximately 225 pages of testimony per month. The number of records produced from the interview write-ups varied greatly, depending on the style of the writer. The actual number of records entered in the computer per month varied throughout the period of this project because of frequent temporary transfer of analysts to other projects.

defenses. In addition, during the *United States v. Ehrlichman* trial, special reports were run at the request of the trial team to review prior testimony by and about defense witnesses as a basis for anticipating their trial testimony and planning their cross-examination.

By the summer of 1974 the Section had completed computerizing relevant testimony and other statements by the defendants in the Watergate cover-up case and most of the testimony and other statements by the witnesses deemed by the Watergate task force to be computer priorities. These records were merged with records from the Select Committee's data base. Chronological printouts of statements by each defendant and each witness were not analyzed by the analysts as had been done for the Fielding case, but were given directly to the lawyers of the trial team as aids in preparing for trial.

Also in the summer of 1974 the section began computerizing testimony and other statements of several witnesses in a Campaign Contributions Task Force investigation. This was abandoned later because of the then pressing demands of the Watergate cover-up trial.

On the whole, computerizing testimony and other witness statements proved far more time-consuming and was far less used in the Watergate case than had been anticipated. Usage in the Fielding break-in case and in other investigations was much greater. Certain attorneys and their investigations were more amenable to use of the computerized data than were others. These attorneys developed combinations of name references and key word queries to retrieve manageable and valuable information from the data base. This technique generally exploited the more lengthy SSC data base and was used to great advantage in later work with diary entries and telephone records. The name or word search, typically at the beginning of an investigation, provided a fairly comprehensive picture of the SSC's prior investigation.

Documentary Evidence

1. *Diaries and Appointment Logs.* In February 1974 the Information Section began computerizing several diaries and appointment logs which had been acquired by the Campaign Contributions Task Force. The analysts adopted an input format virtually identical to that used for abstracting transcripts and created a subject code which would allow these records to be retrieved from the computer either in conjunction with testimonial records or as a separate data base. Diary and log entries were recorded exactly as stated, rather than summarized, except that abbreviations and short notations were clarified.

Diary records were much quicker to abstract and consequently typing became very backlogged. Approximately 12,000 diary records

were transcribed in three months and typing was completed about three months later.⁵ Because of the unforeseen typing lag, computerizing each entry in these diaries took much longer to complete than expected. The computer offered cross reference and selective retrieval capacities, both of which proved valuable because the wealth of material pertinent to several investigations could not otherwise be assimilated. Manual searches by several different investigation teams would have been very time consuming and not as reliable.

This system proved invaluable, for example, with a cooperating witness who had furnished various of his diaries that showed his contacts with potential campaign contributors over a four-year period. The abstractors became adept at reading the diarist's handwriting and abbreviations. Cross reference provided a method of checking whether and when an individual or corporation was mentioned. Selective retrieval was used to pull all records referring to any of a list of individuals or subjects (keywords). This enabled investigators to pull selectively where contacts were very frequent but on varied topics.

Lawyers used the computer reports to prepare their questions for interviews of the diarist about his contacts with contributors and for questioning other key people involved in campaign and fund raising. In addition, diary abstracts were also used for questioning the included persons about contacts they had had with the diarist. The entries conveyed much about the diarist's styles of operation. Computer input of the diaries was substantially complete and ready for the comprehensive interviews of the witness in early summer 1974. Printouts were supplemented by manual searches of the untyped abstracts. In addition to the cross-reference reports, printouts inter-filing all references to any of a list of persons mentioned or key words contained in the diary proved valuable in several investigations.

2. *Telephone Toll Records.* A telephone toll record project began in spring 1974 with the receipt of the SSC's computer file based on telephone records the SSC had received in connection with their investigation of a matter also under inquiry by WSPF. In order to make the SSC file usable the Information Section and the Library of Congress developed a program to match a list of subscribers' names compiled by the SSC to the appropriate called or calling numbers. When this step had been accomplished in fall 1974, the attorney in charge of the investigation requested that telephone bills subpoenaed by WSPF from persons under investigation and an IRS computer

⁵ The relationship of analyst effort to typist effort is difficult to appraise. Of the four analysts who worked on the project, two had continuing transcript assignments and two had competing responsibilities. Transcript records constituted roughly one-third of the typing during the spring and summer. The best estimate of allotment of work for the diary project is 2½ analysts to ½ reviewer to four typists.

file of related telephone records be merged with the Senate file. The IRS data and the new input of records were also checked against the subscribers' list; and subscriber names, if identified, were added to the records. In the course of the investigation this process was repeated several times as the table of known parties called was expanded. Comprehensive chronological printouts and printouts showing all calls to each number were then obtained. The printout reflected the date of the telephone call, the name of the subscriber of the calling number, the number called, the name of the subscriber of the number called, if known, and the cost and time of the call when that information appeared on the bill. These printouts were used by the research analyst assisting in the investigation to study patterns of contact among the persons being investigated. This information was then used to issue subpoenas to telephone companies to learn selected called subscribers' names. Analysis of this information provided valuable leads for questioning witnesses and for tracking the activities of persons under investigation.

3. *Indexing.* A computer indexing project was undertaken in a major investigation to organize a substantial body of correspondence, memoranda, and other personal papers of witnesses and defendants. The writer(s), receiver(s), date and substance of all important documents—letters, memoranda, notes, etc.—obtained in the investigation were indexed and entered in the computer in the following format:

1. Author; date of document; computer sort number based on date of document.
2. Type of document; number of pages.
3. Addressee.
4. Brief synopsis.
5. Names of persons who drafted, approved, or in any other way helped prepare or were connected with the document, including persons who received copies (if such information was reflected on the document).
6. Comments (such as whose copy WSPF had obtained).
7. All persons mentioned, including author, addressee and persons mentioned in the synopsis (separate entry for each person).

Category 7 and the computer sort number were used to arrange the information in categories 1-6 in cross-reference reports, thus organizing all documentary references to each person in chronological order. This retrieval capability proved so satisfactory that a second stage was undertaken: information culled from other documentary sources—diaries, telephone bills, business records of time spent on work for clients, etc.—was added to the computer data base in a compatible format so that it could be retrieved in conjunction with the initial input of records.

Final cross-reference reports which reflected, for each defendant and witness, all relevant documents he had written, received, been connected with, or been mentioned in, all relevant telephone contacts

and meetings he had had, and all relevant actions he had taken, were then obtained and provided to the lawyers to use in preparation for trial. One of the significant factors in the success of this project was that the investigators analyzed the importance of documents and other facts before computer input was undertaken. This speeded the input time and minimized the number of irrelevant records on the printouts.

Generally, computer projects involving documentary evidence proved far more valuable to the prosecutors than earlier projects oriented to testimony. Each was undertaken at the specific request of the lawyer or lawyers who desired to use the output, with the lawyers indicating exactly what information was desired. Each resulted in comprehensive ordering of information in ways which would have been virtually impossible under a manual system.

General Reference Reports

In addition to the computer projects undertaken to aid in specific investigations and trials, the computer was used to provide several general reference reports for WSPF. One, called the "Name List," was an alphabetical listing of all persons whose names had been mentioned in the investigations. Each was identified by his or her position or title, and the dates when it was held, if known, or by the activity for which his or her name had been mentioned. Another, called the "Management Report," was a master listing of civil, congressional, grand jury, trial, and other testimony transcripts, and congressional, WSPF, FBI, IRS and other interview write-ups. The Management Report provided a chronological listing of each witnesses' testimony and interviews, the date, number of pages, and subject matter of the testimony or interview, whether the transcript or interview write-up was available in the Central Files, and whether it had been computerized.

The Information Section also maintained cross-reference printouts of its and the Senate Select Committee's data bases of testimony and other statements as master reference volumes. These reflected, for each person mentioned in the entire data base, all records prepared from statements by or about the person in chronological order of the events described. The cross-reference reports from the Select Committee's data base, which was much larger than WSPF's, were particularly useful for a quick check of a person's involvement in matters under investigation. These were used for many purposes by many members of the staff.

The cross-reference reports were also used after November 1974 as a basis for responding to White House requests about persons being considered for appointment to high Administration positions.

All types of reference works, but particularly the master cross-references and the management report saved a great deal of manual file searching. The management report's inventory of the central files

provided a good start for compiling discovery material for trial. The availability of printed cross-reference reports enabled the Information Section to respond quickly to name check requests.

Appeals

As of this writing, two further computer projects are under way, both to aid in preparation of the brief for the appeal of the Watergate cover-up case: an index of legal papers filed in the case, by topic; and an index of the trial testimony, by events testified to.

OTHER DUTIES

In addition to the computer projects, the analysts in the Information Section worked on several other projects temporarily assigned to them on an as-needed basis from the summer of 1973 through September 1975. Task force requests for this additional assistance were evaluated by the section heads and approved by the Deputy Special Prosecutor. Analysts were assigned according to the priority and immediacy of the task force project as it related to the demands for the various computerized record projects.

Many of these additional assignments related to Presidential tapes secured from the White House. Information System analysts provided attorneys with daily summaries of the tapes hearings held before Judge Sirica in November and December 1973 and January 1974. In August 1974, the Special Prosecutor received tape recordings of 64 Watergate-related conversations with President Nixon. The entire research staff, with assistance from others in the office, was assigned to verify the FBI transcriptions of these recordings. Information Section staff subsequently transcribed a number of tapes received in Spring 1975.

The Information Section also assumed a variety of other duties. Analysts played a major part in the identification, collection and organization of papers and documents to be given to defendants, as required by the relevant rules of criminal procedure in the Federal system. Additional tasks included providing daily summaries of the Watergate and Connally trial testimony, checking briefs for accuracy, and organizing the central and task force files.

SUMMARY OBSERVATIONS

WSPF commenced its operations when others had already gathered much information about some of the matters assigned to the Special Prosecutor. The prosecutors began to organize this information immediately, and could not await the careful planning and development of a computerized information system. In some cases service of the

lawyers through the research analysts' work product lagged behind investigative needs. Because of the hurried start-up of the information system, it is difficult to evaluate the potential future utility of computerizing grand jury and office interview testimony during the course of an investigation. However, even in WSPF's system, the testimony abstracts and computer runs by various names, dates and subject matters proved useful as a double check and as a basis for preparation of cross-examination of some trial witnesses for the defense.

The other computer applications proved much more useful, primarily in the investigative process. The computerized telephone records, diaries and appointment logs did not merely replace manual efforts; they produced reports which could not have been produced manually because of the great volume of material and the level of detailed analysis which was required. The manipulation of data made possible by the computerized entries served as a valuable investigative tool. Also useful in various ways was the general reference material which could be retrieved in the different modes required by the prosecutors.

Although WSPF's retrieval system and some of its applications had been developed for the SSC by the Library of Congress, much of the work done in the Information Section was experimental. While computerized information retrieval has been used for legal research, it had not been used very often for criminal investigations and trials. Much more needs to be done by the ongoing prosecutorial agencies to develop systems and applications which can be planned and evaluated over time, with careful implementation of the resulting methodological changes in order to build maximum use by prosecutors and a proper measure of cost effectiveness.

The hiring and use of research analysts, who were all recent college graduates, proved invaluable in many of the paralegal tasks presented by investigations and trials. Again, long-range planning and evaluation is needed to gauge the best kind of preparatory training for such tasks and the proper education level needed by the personnel in order to maintain an effective operation but at the same time not involve persons having an education level beyond that which is necessary. In addition, lawyers will need training in computer usages and in effective use of paralegal support personnel.

Administration

Organizations—whether governmental or private—depend in large part for their success on the work of employees who receive little or no public recognition of their efforts. In this respect, WSPF was no exception: the most visible members of the staff were the attorneys who conducted the investigations and appeared in court. Their work could not have proceeded as smoothly and effectively as it did, however, without the assistance of administrative personnel who provided the necessary support. WSPF's Administrative Office was responsible for handling the numerous day-to-day questions about personnel matters, budget, physical facilities and equipment, and office security. Although WSPF was established as an independent entity within the Justice Department, with full authority to hire its own staff, it attempted to conform its administrative practices to Department policies and guidelines. To avoid unwarranted departures from Department practices, WSPF's Administrative Officer reported directly to the Special Prosecutor and consulted with the Department's Office of Management and Budget.

1. *Personnel.* During its formative stages, the task of interviewing and hiring staff members was handled by several attorneys chosen by Special Prosecutor Cox to assist him in setting up the office. Thereafter, the primary responsibility for these activities fell to the Administrative Office, which hired clerical and support personnel and assisted in the selection of additional attorneys. In addition the Administrative Office was responsible for the preparation of position descriptions; determination of grade levels; the handling of all personnel requests such as appointments, reassignments, promotions and resignations; and advising and assisting the various task forces regarding such matters as personnel management, employee relations, performance evaluations and awards. The magnitude of this task was amplified by the fluctuation of personnel among task forces and in and out of WSPF.

The Administrative Office also established a work program with the Model Secondary School for the Deaf, the high school located at Gallaudet College in Washington. During the school year, ten deaf students worked in the Administrative Office. They were responsible

for the internal mail system and outside deliveries and performed other clerical duties. Four college students also worked intermittently with the Administrative Office on a part-time or full-time basis during the school year and summer vacations.

2. *Budget.* The Administrative Office also handled budget preparation and provided fiscal review and control of expenditures. WSPF's budget, which was included as part of the Department of Justice General Administration budget, and its actual expenditures for the fiscal years (F Y) in question were as follows:¹

	<i>Appropriation</i>	<i>Actual expenditures</i>
FY 1974-----	\$2,800,000	\$2,552,000
FY 1975-----	2,865,000	2,625,000
FY 1976 ² -----	2,044,000 [request]	-----

Special Prosecutor Cox appeared before the Senate Subcommittee on Appropriations in July of 1973 for his initial budget request of 90 employees and \$2,800,000 in funds to operate the office. This request was prepared by the Department of Justice. The budgets for FY 1975 and FY 1976, however, were prepared by WSPF itself. After final review by the Special Prosecutor, they were submitted to the Department of Justice for inclusion in its overall budget request.³

The largest expenditure for FY 1974—apart from personnel salaries of \$1,555,000—was used to establish the office: these “start-up” costs included payments for furniture, equipment and office alterations performed to meet stringent security requirements. The following year, staff salaries amounted to \$1,750,000. Rent, communications costs and utilities averaged about \$265,000 a year; security costs amounted to about \$225,000 annually. The remaining expenditures were for travel, printing, supplies, machine rentals and court reporter services. A monthly report, reviewed by the Administrative Officer and the Special Prosecutor, was provided to the Justice Department detailing expenditures for that month and year to date. As these figures indicate, the actual expenditures for each fiscal year were less than the amount authorized.

3. *Physical Facilities.* When WSPF was first established in May 1973, temporary quarters were made available in the office of the Assistant Attorney General for Administration. In early June, the office moved into permanent space in a building at 1425 K Street NW. In August, additional office space was rented in the same building.

¹ Costs between May 25, 1973, and June 30, 1973, amounted to \$250,000 and were absorbed in the Justice Department General Administration budget.

² The FY 1976 request for funds had to be submitted at an early date before the date of termination of WSPF investigations could be projected.

³ Although the Attorney General had the power of final review over WSPF's budget, the Special Prosecutor had almost complete authority over expenditures.

A total of 15,000 square feet was leased and furnished with basic Government-issue furniture.⁴

4. *Security.* The day-to-day security officer for WSPF was the Administrative Officer, with overall control and guidance provided by the Justice Department. A special security director from the Department was appointed to maintain the integrity of files and documents and to establish procedures to prevent unauthorized entry into the office. The security director inspected the suite of offices selected for WSPF and advised on security construction requirements, the installation of electronic surveillance and fire detection systems, the guard services needed by the office, procedures to control access to the office by both staff members and outsiders and methods of preventing interception of telephone communications and compromise of documents.

Contractors were able to perform the necessary physical modifications to the office within two weeks of locating office space. Sound-proofing was placed around all pipes and conduits entering the office space. A closed-circuit television system was installed for observation of the lobby area at the main entrance to the office. Alarms were attached to windows, doors and walls, and ultrasonic motion detectors were placed in the Special Prosecutor's office and other key areas. Officers of the Federal Protective Service provided around-the-clock protection. A color-coded I.D. picture card system using a double card exchange was used as a means of controlling employee and visitor traffic.⁵ Visitors were required to have an escort inside the offices at all times. Security personnel performed periodic electronic sweeps of office space and telephones. FBI background investigations for TOP SECRET clearances were completed for all WSPF personnel.

⁴ The offices occupied portions of two floors with a law library located on another floor. In addition to its office space at 1425 K Street, the Special Prosecutor had the use of several rooms in the U.S. District Courthouse, two of which were used by Watergate grand juries and court reporters and the others by task forces during trials.

⁵ All employees were required to surrender a photo badge when they entered the office and to wear a specially coded photo badge while in the office.

Charter Documents

CREATION OF THE WATERGATE SPECIAL PROSECUTION FORCE

TITLE 28—JUDICIAL ADMINISTRATION

CHAPTER I—DEPARTMENT OF JUSTICE

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Order No. 517-73

ESTABLISHING THE OFFICE OF WATERGATE SPECIAL PROSECUTION FORCE

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, there is hereby established in the Department of Justice, the Office of Watergate Special Prosecution Force, to be headed by a Director. Accordingly, Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

1. Section 0.1 of Subpart A, which lists the organizational units of the Department, is amended by adding "Office of Watergate Special Prosecution Force" immediately after "Office of the Pardon Attorney."

2. A new Subpart G-1 is added immediately after Subpart G, to read as follows:

"Subpart G-1—Office of Watergate Special Prosecution Force

§ 0.37 General Functions.

The Office of Watergate Special Prosecution Force shall be under the direction of a Director who shall be the Special Prosecutor appointed by the Attorney General. The duties and responsibilities of the Special Prosecutor are set forth in the attached appendix which is incorporated and made a part hereof."

This order is effective as of May 25, 1973.

(S) **ELLIOT RICHARDSON,**
Attorney General.

Date: May 31, 1973.

Appendix on Duties and Responsibilities of the Special Prosecutor

The Special Prosecutor. There is appointed by the Attorney General, within the Department of Justice, a Special Prosecutor to whom the Attorney General shall delegate the authorities and provide the staff and other resources described below.

The Special Prosecutor shall have full authority for investigating and prosecuting offenses against the United States arising out of the unauthorized entry

into Democratic National Committee Headquarters at the Watergate, all offenses arising out of the 1972 Presidential Election for which the Special Prosecutor deems it necessary and appropriate to assume responsibility, allegations involving the President, members of the White House staff, or Presidential appointees, and any other matters which he consents to have assigned to him by the Attorney General.

In particular, the Special Prosecutor shall have full authority with respect to the above matters for:

- conducting proceedings before grand juries and any other investigations he deems necessary;
- reviewing all documentary evidence available from any source, as to which he shall have full access;
- determining whether or not to contest the assertion of "Executive Privilege" or any other testimonial privilege;
- determining whether or not application should be made to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders;
- deciding whether or not to prosecute any individual, firm, corporation or group of individuals;
- initiating and conducting prosecutions, framing indictments, filing informations, and handling all aspects of any cases within his jurisdiction (whether initiated before or after his assumption of duties), including any appeals;
- coordinating and directing the activities of all Department of Justice personnel, including United States Attorneys;
- dealing with and appearing before Congressional committees having jurisdiction over any aspect of the above matters and determining what documents, information, and assistance shall be provided to such committees.

In exercising this authority, the Special Prosecutor will have the greatest degree of independence that is consistent with the Attorney General's statutory accountability for all matters falling within the jurisdiction of the Department of Justice. The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions. The Special Prosecutor will determine whether and to what extent he will inform or consult with the Attorney General about the conduct of his duties and responsibilities. The Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part.

Staff and Resource Support

1. *Selection of Staff.* The Special Prosecutor shall have full authority to organize, select, and hire his own staff of attorneys, investigators, and supporting personnel, on a full or part-time basis, in such numbers and with such qualifications as he may reasonably require. He may request the Assistant Attorneys General and other officers of the Department of Justice to assign such personnel and to provide such other assistance as he may reasonably require. All personnel in the Department of Justice, including United States Attorneys, shall cooperate to the fullest extent possible with the Special Prosecutor.

2. *Budget.* The Special Prosecutor will be provided with such funds and facilities to carry out his responsibilities as he may reasonably require. He shall have the right to submit budget requests for funds, positions, and other assistance, and such requests shall receive the highest priority.

3. Designation and Responsibility. The personnel acting as the staff and assistants of the Special Prosecutor shall be known as the Watergate Special Prosecution Force and shall be responsible only to the Special Prosecutor.

Continued Responsibilities of Assistant Attorney General, Criminal Division. Except for the specific investigative and prosecutorial duties assigned to the Special Prosecutor, the Assistant Attorney General in charge of the Criminal Division will continue to exercise all of the duties currently assigned to him.

Applicable Departmental Policies. Except as otherwise herein specified or as mutually agreed between the Special Prosecutor and the Attorney General, the Watergate Special Prosecution Force will be subject to the administrative regulations and policies of the Department of Justice.

Public Reports. The Special Prosecutor may from time to time make public such statements or reports as he deems appropriate and shall upon completion of his assignment submit a final report to the appropriate persons or entities of the Congress.

Duration of Assignment. The Special Prosecutor will carry out these responsibilities, with the full support of the Department of Justice, until such time as, in his judgment, he has completed them or until a date mutually agreed upon between the Attorney General and himself.

SPECIAL PROSECUTOR'S DESIGNATION OF ATTORNEYS

TITLE 28—JUDICIAL ADMINISTRATION

CHAPTER I—DEPARTMENT OF JUSTICE

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

SUBPART G-1—OFFICE OF WATERGATE SPECIAL PROSECUTION FORCE

Order No. 525-73

DELEGATION OF AUTHORITY TO DESIGNATE ATTORNEYS TO CONDUCT LEGAL PROCEEDINGS

The Office of Watergate Special Prosecution Force was established effective May 25, 1973. (38 F.R. 14688). The purpose of this order is to make clear that the Special Prosecutor has full authority to exercise the Attorney General's authority under 28 U.S.C. 515(a) to designate attorneys to conduct legal proceedings, including grand jury proceedings.

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, Subpart G-1 of Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended by adding the following new section 0.38 at the end thereof:

“§ 0.38 *Designation of attorneys.* The Special Prosecutor is authorized to designate attorneys to conduct legal proceedings, including grand jury proceedings.”

Date: 7/8/73.

(S) **ELLIOT RICHARDSON,**
Attorney General.

CLARIFICATION OF SPECIAL PROSECUTOR'S AUTHORITY

TITLE 28—JUDICIAL ADMINISTRATION

CHAPTER I—DEPARTMENT OF JUSTICE

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

SUBPART G-1—OFFICE OF WATERGATE SPECIAL PROSECUTION FORCE

Order No. 531-73

CLARIFICATION OF AUTHORITY OF SPECIAL PROSECUTOR

The purpose of this order is to clarify the Special Prosecutor's authority with respect to matters generally assigned to his responsibility. See Department of Justice Order Nos. 517-73, 518-73, 525-73.

By virtue of the authority vested in me by 28 U.S.C. 509, 510, and 5 U.S.C. 301 Section 0.38 of Subpart G-1 of Part 0 of Chapter I of Title 28, Code of Federal Regulations is amended to read as follows:

§ 0.38 *Specific functions.* The Special Prosecutor is assigned and delegated the following specific functions with respect to matters specified in this Subpart:

(a) Pursuant to 28 U.S.C. 515(a), to conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings, which United States attorneys are authorized by law to conduct, and to designate attorneys to conduct such legal proceedings.

(b) To approve or disapprove the production or disclosure of information or files relating to matters within his cognizance in response to a subpoena, order, or other demand of a court or other authority. (See Part 16(B) of this Chapter.)

(c) To apply for and to exercise the authority vested in the Attorney General under 18 U.S.C. 6005 relating to immunity of witnesses in Congressional proceedings.

The listing of these specific functions is for the purpose of illustrating the authority entrusted to the Special Prosecutor and is not intended to limit in any manner his authority to carry out his functions and responsibilities.

Date: 7/31/73.

(S) **ELLIOT RICHARDSON,**
Attorney General.

ABOLITION OF WSPF IN OCTOBER 1973

TITLE 28—JUDICIAL ADMINISTRATION

CHAPTER I—DEPARTMENT OF JUSTICE

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Order No. 546-73

ABOLISHMENT OF OFFICE OF WATERGATE SPECIAL PROSECUTION FORCE

This order abolishes the Office of Watergate Special Prosecution Force. The functions of that Office revert to the Criminal Division.

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, the Office of Watergate Special Prosecution Force is abolished. Accordingly,

Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

1. Section 0.1 of Subpart A, which lists the organizational units of the Department, is amended by deleting "Office of Watergate Special Prosecution Force."

2. Subpart G-1 is revoked.

Order No. 517-73 of May 31, 1973, Order No. 518-73 of May 31, 1973, Order No. 525-73 of July 8, 1973, and Order No. 531-73 of July 31, 1973, are revoked.

This order is effective as of October 21, 1973.

/S/ ROBERT H. BORK,
Acting Attorney General.

Date: Oct. 23, 1973.

REESTABLISHMENT OF WSPF IN NOVEMBER 1973

TITLE 28—JUDICIAL ADMINISTRATION

CHAPTER I—DEPARTMENT OF JUSTICE

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Order No. 551-73

ESTABLISHING THE OFFICE OF WATERGATE SPECIAL PROSECUTION FORCE

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, there is hereby established in the Department of Justice, the Office of Watergate Special Prosecution Force, to be headed by a Director. Accordingly, Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

1. Section 0.1(a) which lists the organization units of the Department, is amended by adding "Office of Watergate Special Prosecution Force" immediately after "Office of Criminal Justice."

2. A new Subpart G-1 is added immediately after Subpart G, to read as follows:

"Subpart G-1—Office of Watergate Special Prosecution Force

§ 0.37 General Functions.

The Office of Watergate Special Prosecution Force shall be under the direction of a Director who shall be the Special Prosecutor appointed by the Attorney General. The duties and responsibilities of the Special Prosecutor are set forth in the attached appendix which is incorporated and made a part hereof.

§ 0.38 Specific Functions.

The Special Prosecutor is assigned and delegated the following specific functions with respect to matters specified in this Subpart:

(a) Pursuant to 28 U.S.C. 515(a), to conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings, which United States attorneys are authorized by law to conduct, and to designate attorneys to conduct such legal proceedings.

(b) To approve or disapprove the production or disclosure of information or files relating to matters within his cognizance in response to a subpoena, order, or other demand of a court or other authority. (See Part 16(B) of this chapter.)

(c) To apply for and to exercise the authority vested in the Attorney General under 18 U.S.C. 6005 relating to immunity of witnesses in Congressional proceedings.

The listing of these specific functions is for the purpose of illustrating the authority entrusted to the Special Prosecutor and is not intended to limit in any manner his authority to carry out his functions and responsibilities."

Date: 2 Nov 1973.

(S) ROBERT H. BORK,
Acting Attorney General.

Appendix on Duties and Responsibilities of the Special Prosecutor

The Special Prosecutor. There is appointed by the Attorney General, within the Department of Justice, a Special Prosecutor to whom the Attorney General shall delegate the authorities and provide the staff and other resources described below.

The Special Prosecutor shall have full authority for investigating and prosecuting offenses against the United States arising out of the unauthorized entry into Democratic National Committee Headquarters at the Watergate, all offenses arising out of the 1972 Presidential Election for which the Special Prosecutor deems it necessary and appropriate to assume responsibility, allegations involving the President, members of the White House staff, or Presidential appointees, and any other matters which he consents to have assigned to him by the Attorney General.

In particular, the Special Prosecutor shall have full authority with respect to the above matters for:

- conducting proceedings before grand juries and any other investigations he deems necessary;
- reviewing all documentary evidence available from any source, as to which he shall have full access;
- determining whether or not to contest the assertion of "Executive Privilege" or any other testimonial privilege;
- determining whether or not application should be made to any Federal court for a grant of immunity to any witness, consistently with applicable statutory requirements, or for warrants, subpoenas, or other court orders;
- deciding whether or not to prosecute any individual, firm, corporation or group of individuals;
- initiating and conducting prosecutions, framing indictments, filing informations, and handling all aspects of any cases within his jurisdiction (whether initiated before or after his assumption of duties), including any appeals;
- coordinating and directing the activities of all Department of Justice personnel, including United States Attorneys;
- dealing with and appearing before Congressional committees having jurisdiction over any aspect of the above matters and determining what documents, information, and assistance shall be provided to such committees.

In exercising this authority, the Special Prosecutor will have the greatest degree of independence that is consistent with the Attorney General's statutory accountability for all matters falling within the jurisdiction of the Department of Justice. The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions. The Special Prosecutor will determine whether and to what extent he will inform or consult with the Attorney General about the conduct of his duties and responsibilities. In accordance with assurances given by the President to the Attorney General that the President will not exercise his Constitutional powers to effect the discharge of the Special Prosecutor or to limit the independence that he is hereby given, the Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his

part and without the President's first consulting the Majority and the Minority Leaders and Chairmen and ranking Minority Members of the Judiciary Committees of the Senate and House of Representatives and ascertaining that their consensus is in accord with his proposed action.

Staff and Resource Support

1. *Selection of Staff.* The Special Prosecutor shall have full authority to organize, select, and hire his own staff of attorneys, investigators, and supporting personnel, on a full or part-time basis, in such numbers and with such qualifications as he may reasonably require. He may request the Assistant Attorneys General and other officers of the Department of Justice to assign such personnel and to provide such other assistance as he may reasonably require. All personnel in the Department of Justice, including United States Attorneys, shall cooperate to the fullest extent possible with the Special Prosecutor.

2. *Budget.* The Special Prosecutor will be provided with such funds and facilities to carry out his responsibilities as he may reasonably require. He shall have the right to submit budget requests for funds, positions, and other assistance and such requests shall receive the highest priority.

3. *Designation and Responsibility.* The personnel acting as the staff and assistants of the Special Prosecutor shall be known as the Watergate Special Prosecution Force and shall be responsible only to the Special Prosecutor.

Continued Responsibilities of Assistant Attorney General, Criminal Division. Except for the specific investigative and prosecutorial duties assigned to the Special Prosecutor, the Assistant Attorney General in charge of the Criminal Division will continue to exercise all of the duties currently assigned to him.

Applicable Departmental Policies. Except as otherwise herein specified or as mutually agreed between the Special Prosecutor and the Attorney General, the Watergate Special Prosecution Force will be subject to the administrative regulations and policies of the Department of Justice.

Public Reports. The Special Prosecutor may from time to time make public such statements or reports as he deems appropriate and shall upon completion of his assignment submit a final report to the appropriate persons or entities of the Congress.

Duration of Assignments. The Special Prosecutor will carry out these responsibilities, with the full support of the Department of Justice, until such time as, in his judgment, he has completed them or until a date mutually agreed upon between the Attorney General and himself.

CLARIFICATION OF SPECIAL PROSECUTOR'S INDEPENDENCE

TITLE 28—JUDICIAL ADMINISTRATION

CHAPTER I—DEPARTMENT OF JUSTICE

PART O—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

SUBPART G-1—OFFICE OF WATERGATE SPECIAL PROSECUTION FORCE

Order No. 554-73

AMENDING THE REGULATIONS ESTABLISHING THE OFFICE OF WATERGATE SPECIAL PROSECUTION FORCE

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, the last sentence of the fourth paragraph of the Appendix to Subpart G-1 is amended to read as follows:

In accordance with assurances given by the President to the Attorney General that the President will not exercise his Constitutional powers to effect the discharge of the Special Prosecutor or to limit the independence that he is hereby given, (1) the Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part and without the President's first consulting the Majority and the Minority Leaders and Chairmen and ranking Minority Members of the Judiciary Committees of the Senate and House of Representatives and ascertaining that their consensus is in accord with his proposed action, and (2) the jurisdiction of the Special Prosecutor will not be limited without the President's first consulting with such Members of Congress and ascertaining that their consensus is in accord with his proposed action.

(S) ROBERT H. BORK,
Acting Attorney General.

Date: Nov. 19, 1973.

CLARIFICATION OF CLARIFICATION

NOVEMBER 21, 1973.

LEON JAWORSKI, Esq.
*Special Prosecutor
Watergate Special Prosecution Force
1425 K Street, N.W.
Washington, D.C. 20005*

DEAR MR. JAWORSKI:

You have informed me that the amendment to your charter of November 19, 1973 has been questioned by some members of the press. This letter is to confirm what I told you in our telephone conversation. The amendment of November 19, 1973 was intended to be, and is, a safeguard of your independence.

The President has given his assurance that he would not exercise his constitutional powers either to discharge the Special Prosecutor or to limit the independence of the Special Prosecutor without first consulting the Majority and Minority leaders and chairmen and ranking members of the Judiciary Committees of the Senate and the House, and ascertaining that their consensus is in accord with his proposed action.

When that assurance was worked into the charter, the draftsman inadvertently used a form of words that might have been construed as applying the President's assurance only to the subject of discharge. This was subsequently pointed out to me by an assistant and I had the amendment of November 19 drafted in order to put beyond question that the assurance given applied to your independence under the charter and not merely to the subject of discharge.

There is, in my judgment, no possibility whatever that the topics of discharge or limitation of independence will ever be of more than hypothetical interest. I write this letter only to repeat what you already know: the recent amendment to your charter was to correct an ambiguous phrasing and thus to make clear that the assurances concerning congressional consultation and consensus apply to all aspects of your independence.

Sincerely,

(S) ROBERT H. BORK,
Acting Attorney General.

Appendix K:

Chronology

<i>Date</i>	<i>Event</i>
May 28, 1972-----	Democratic National Committee Headquarters at Watergate is broken into, electronic surveillance equipment installed.
June 17, 1972-----	Five men are arrested at Democratic National Committee Headquarters while attempting to repair electronic equipment.
June 28, 1972-----	G. Gordon Liddy, counsel to FCRP, is fired when he fails to co-operate with FBI agents investigating the Watergate break-in.
July 1, 1972-----	John Mitchell resigns as CRP Chairman.
July 14, 1972-----	Hugh Sloan resigns as FCRP Treasurer.
July 31 to August 10, 1972.	Press reports suggest that money for Watergate break-in came from CRP funds given by Liddy to one of the arrested men.
August 16, 1972-----	CRP Chairman Clark MacGregor acknowledges that Liddy spent CRP funds for security program.
August 30, 1972-----	The President announces that Dean has conducted and completed an investigation into the Watergate affair. Claims that no one in the White House or employed by the administration was involved.
September 15, 1972----	Bernard Barker, Virgilio Gonzalez, E. Howard Hunt, G. Gordon Liddy, Eugenio Martinez, James W. McCord, Jr., and Frank Sturgis are indicted for their parts in the June 17, 1972 break-in at Democratic National Headquarters.
September 17 to October 25, 1972.	Press reports suggest that CRP maintained a secret cash fund controlled by Mitchell, Stans, Magruder, Kalsbach and Haldeman, which was used to finance the Watergate break-in and other sensitive political projects.
October 26, 1972-----	MacGregor acknowledges existence of special cash fund, but denies it was used for sabotage against Democrats.
January 8, 1973-----	Watergate break-in trial begins.
January 11, 1973-----	Hunt pleads guilty to charges in break-in indictment.
January 15, 1973-----	Barker, Sturgis, Martinez and Gonzalez plead guilty to charges in break-in indictment.
January 15 to January 22, 1973.	Press reports suggest that Watergate defendants were being paid by unnamed sources—possibly CRP—and that they were promised money and clemency to plead guilty.
January 30, 1973-----	Liddy and McCord are convicted on all counts of break-in indictment.

<i>Date</i>	<i>Event</i>
February 7, 1973.....	Senate unanimously passes S. 60, a resolution creating the Select Committee on Presidential Campaign Activities.
March 19, 1973.....	McCord writes to Judge Sirica alleging that perjury was committed at trial and that defendants were pressured to remain silent.
March 23, 1973.....	Judge Sirica issues provisional sentences for Watergate break-in defendants, except McCord; makes McCord's letter public.
April 5, 1973.....	L. Patrick Gray's nomination to become Director of the FBI is withdrawn.
	Judge W. Matt Byrne reports a personal meeting with Ehrlichman, where Ehrlichman suggested a possible future assignment for Byrne.
April 17, 1973.....	The President announces White House staff will appear before the Senate Select Committee, and that there have been major new developments in the Watergate investigation, that real progress has been made toward finding the truth.
April 19, 1973.....	Attorney General Richard Kleindienst removes himself from Watergate case. Henry Petersen assumes responsibility for conduct of Watergate investigation.
April 23, 1973.....	White House issues a statement denying that the President had any prior knowledge of Watergate affair.
April 27, 1973.....	Gray resigns as acting director of the FBI.
	<i>Washington Post</i> reports Gray destroyed documents in Howard Hunt's files after a discussion with Ehrlichman and Dean.
	Judge Byrne reads memo at Ellsberg/Russo trial describing Hunt and Liddy break-in of Dr. Fielding's office.
	Hugh Sloan is accused of submitting false documents to the General Accounting Office. GAO cites CRP and Maurice Stans for four campaign expenditure violations.
April 30, 1973.....	Haldeman, Ehrlichman, Dean and Kleindienst resign. The President nominates Elliot Richardson to become new Attorney General.
May 4, 1973.....	George A. Hearing is indicted on two counts of fabricating and distributing illegal campaign literature (18 USC 612). Pleaded guilty May 11; sentenced to a one-year prison term on June 15.
May 7, 1973.....	A spokesman for the President denies that there were any offers of clemency to anyone connected with the Watergate affair.
	Richardson announces that he will appoint a special prosecutor.
May 9, 1973.....	Egil Krogh resigns; claims full responsibility for the Fielding break-in.
May 9 to May 22, 1973.	Richardson confirmation hearings are held before the Senate Judiciary Committee.
May 10, 1973.....	Mitchell, Stans, Robert Vesco and Harry Sears are indicted for attempting to impede a SEC investigation of Vesco.

<i>Date</i>	<i>Event</i>
May 11, 1973-----	Judge Byrne dismisses all criminal charges against Ellsberg and Russo in Pentagon Papers case.
May 17, 1973-----	Senate Select Committee begins public hearings.
May 21, 1973-----	Richardson announces nomination of Archibald Cox as Special Prosecutor.
May 23, 1973-----	Richardson is confirmed by Senate to become new Attorney General.
May 25, 1973-----	Richardson is sworn in as Attorney General. Cox is sworn in as Special Prosecutor.
June 12, 1973-----	Court orders use immunity for Dean and Magruder.
June 25, 1973-----	Dean tells Senate Select Committee that the President knew of the cover-up as early as September 1972.
June 27, 1973-----	Dean submits "enemies list" memorandum of August 16, 1971, to Senate Select Committee.
	Fred LaRue pleads guilty to an information charging one-count violation of 18 USC 371, conspiracy to obstruct justice.
June 30, 1973-----	Earl Silbert, Seymour Glanzer and Donald Campbell, Assistant U.S. Attorneys for the District of Columbia, withdraw from the Watergate investigation.
July 7, 1973-----	The President informs the Senate Select Committee that he will not personally appear before the Committee and that he will not grant the Committee access to Presidential files.
July 16, 1973-----	Herbert Kalmbach, in testimony before the Senate Select Committee, claims that John Ehrlichman approved cash payments to the burglars who broke into Watergate.
	Alexander Butterfield informs the Senate Select Committee of the presidential taping system.
July 20, 1973-----	Liddy refuses to take an oath as a witness before the House Armed Services Subcommittee during a Watergate-related investigation.
July 23, 1973-----	Senate Select Committee issues subpoenas for White House tapes and documents.
	Special Prosecutor Cox issues grand jury subpoena for tapes and documents needed for investigation into the Watergate cover-up.
July 24, 1973-----	Ehrlichman tells the Senate Select Committee that break-in at Fielding's office was legal, and that it was undertaken for national security purposes.
July 25, 1973-----	The President informs Judge Sirica of his decision to refuse to comply with the Special Prosecutor's subpoena.
July 31, 1973-----	The <i>Washington Post</i> reports that the President did not sign the deed giving his papers to the National Archives, that the deed was not delivered until April 1 of 1970 (nine months after the effective date of the 1969 law prohibiting tax deductions for such gifts) and that the deed was never accepted by the Archives as a formal written document.
August 9, 1973-----	Senate Select Committee files suit against the President for failure to comply with their subpoena.

<i>Date</i>	<i>Event</i>
August 13, 1973.....	Grand Jury II is empanelled to investigate campaign contributions, political espionage, plumbers and ITT.
August 16, 1973.....	Magruder pleads guilty to one count violation of 18 USC 371, conspiracy to unlawfully intercept wire and oral communications, to obstruct justice and to defraud the United States.
August 29, 1973.....	Judge Sirica enforces grand jury subpoena to the President for nine presidential conversations.
September 11, 1973....	Oral arguments are heard before the U.S. Court of Appeals concerning refusal of the President to comply with the Special Prosecutor's subpoena.
October 1, 1973.....	Donald Segretti pleads guilty to three counts of violating 18 USC 612, distributing illegal campaign literature.
October 11, 1973.....	Krogh is indicted on two counts of violating 18 USC 1623, making a false declaration before a grand jury.
October 12, 1973.....	U.S. Court of Appeals orders the President to produce subpoenaed tapes.
October 17, 1973.....	Minnesota Mining and Manufacturing pleads guilty to a violation of 18 USC 610, illegal campaign contributions; fined \$3,000.
	Harry Heltzer, of Minnesota Mining and Manufacturing, pleads guilty to a non-willful violation of 18 USC 610, illegal campaign contributions; fined \$500.
	American Airlines pleads guilty to a violation of 18 USC 610, illegal campaign contributions; fined \$5,000.
	Goodyear Tire & Rubber Company pleads guilty to a violation of 18 USC 610; fined \$5,000.
	Russell De Young, of Goodyear Tire and Rubber, pleads guilty to a non-willful violation of 18 USC 610; fined \$1,000.
October 19, 1973.....	The President offers the Stennis tapes compromise. Orders Special Prosecutor Cox to seek no further litigation.
	Dean pleads guilty to an information charging a one-count violation of 18 USC 371, conspiracy to obstruct justice.
	Dwayne O. Andreas, Chairman of the Board, and First Interoceanic Corporation plead not guilty to four counts of non-willful violations of 18 USC 610. Both were acquitted on July 12, 1974.
October 20, 1973.....	Special Prosecutor Cox holds a press conference where he explains his refusal to comply with the President's order.
	The President orders that the Special Prosecutor be fired. Richardson resigns in protest and Ruckelshaus is fired. Acting Attorney General Bork fires Special Prosecutor Cox. Special Prosecution Force is transferred to the Department of Justice, Criminal Division.
October 23, 1973.....	The President informs Judge Sirica that he will comply with grand jury subpoena.
October 31, 1973.....	J. Fred Buzhardt, Special Counsel to the President, informs the Court that two of the subpoenaed tapes do not exist.

<i>Date</i>	<i>Event</i>
November 1, 1973 -----	Acting Attorney General Bork announces the selection of Leon Jaworski to succeed Archibald Cox as Special Prosecutor.
November 2, 1973 -----	Watergate Special Prosecution Force is re-established by an order of the Acting Attorney General.
November 5, 1973 -----	Leon Jaworski is sworn in as the new Special Prosecutor. Segretti is sentenced to serve six months in prison.
November 7, 1973 -----	Senate passes S.R. 194, affirming the authority of the Select Committee to subpoena and sue the President.
November 9, 1973 -----	Final Watergate break-in sentences are handed down.
November 12, 1973 -----	Braniff Airways pleads guilty to a violation of 18 USC 610, illegal campaign contributions; fined \$5,000.
November 13, 1973 -----	Hardling L. Lawrence, of Braniff, pleads guilty to a non-willful violation of 18 USC 610; fined \$1,000.
	Gulf Oil Corporation pleads guilty to a violation of 18 USC 610; fined \$5,000.
	Claude C. Wild, Jr., of Gulf Oil, pleads guilty to a violation of 18 USC 610; fined \$1,000.
	Ashland Petroleum Gabon, Inc., pleads guilty to a violation of 18 USC 610; fined \$5,000.
	Orin Atkins of Ashland Petroleum, pleads no contest to charges of non-willful violations of 18 USC 610; fined \$1,000.
November 21, 1973 -----	Buzhardt informs Judge Sirica of an 18½ minute gap on the tape of a June 20, 1972 conversation between the President and Haldeman.
	Judge Sirica appoints a panel of scientific experts to examine tapes of presidential conversations handed over in compliance with the July 23rd grand jury subpoena.
November 29, 1973 -----	Dwight Chapin is indicted on four counts of violating 18 USC 1623, making false declarations before a grand jury.
November 30, 1973 -----	Krogh pleads guilty to an information charging one-count violation of 18 USC 241, conspiracy to violate civil rights.
	Judge Sirica holds hearings, <i>in camera</i> , concerning executive privilege claims on three of the subpoenaed tapes.
December 4, 1973 -----	Phillips Petroleum Company pleads guilty to a violation of 18 USC 610, illegal campaign contributions; fined \$5,000.
	William W. Keeler, of Phillips Petroleum, pleads guilty to a non-willful violation of 18 USC 610; fined \$1,000.
December 6, 1973 -----	Brief for the U.S. in conviction appeal of G. Gordon Liddy is filed (DNC break-in).
December 19, 1973 -----	Carnation Company pleads guilty to a violation of 18 USC 610; fined \$5,000.
	H. Everett Olson, of the Carnation Company, pleads guilty to a non-willful violation of 18 USC 610; fined \$1,000.
January 7, 1974 -----	Grand Jury III is empanelled to investigate matters similar to those investigations carried out by Grand Jury II.

<i>Date</i>	<i>Event</i>
January 21, 1974	Herbert Porter is charged with a one-count violation of 18 USC 1001, making false statements to agents of the FBI.
January 24, 1974	Krogh is sentenced to a prison term of two to six years, all but six months suspended. October 11 indictment is dismissed.
January 28, 1974	Porter pleads guilty to January 21 information.
February 6, 1974	House of Representatives authorizes House Judiciary Committee to investigate if grounds exist to impeach the President.
February 25, 1974	Herbert W. Kalmbach pleads guilty to a one-count violation of the Federal Corrupt Practices Act, and one count of promising Federal employment as a reward for political activity. He is sentenced to serve 6-18 months and fined \$10,000 for the first count, six months for the second. Sentences are to run concurrently.
March 1, 1974	Watergate cover-up indictment: Colson, Ehrlichman, Haldeman, Mardian, Mitchell, Parkinson, and Strachan are charged with offenses stemming from events following the break-in at the Democratic National Headquarters on June 17, 1972.
March 4, 1974	Briefs for the U.S. in conviction appeals of McCord and Hunt are filed.
March 6, 1974	Hearing is held before Judge Sirica on transfer of grand jury materials to the House Judiciary Committee.
March 7, 1974	Fielding break-in indictment: Barker, Colson, De Diego, Ehrlichman, Liddy, Martinez are charged with offenses stemming from the September 3-4, 1971, break-in at the Los Angeles office of Dr. Fielding.
	Diamond International Corporation pleads guilty to a violation of 18 USC 610; fined \$5,000.
	Ray Dubrowin, of Diamond International, pleads guilty to a non-willful violation of 18 USC 610; fined \$1,000.
March 15, 1974	Special Prosecutor Jaworski issues subpoena for specified documents for use in grand jury.
March 18, 1974	Judge Sirica announces decision to permit transfer of grand jury material to the House Judiciary Committee.
March 20, 1974	Haldeman and Strachan file petition for writ of mandamus with U.S. Court of Appeals concerning transfer of grand jury material.
March 21, 1974	U.S. Court of Appeals hears Haldeman and Strachan petition. Denied later in the day.
March 26, 1974	Grand jury materials are transferred to the House Judiciary Committee.
March 29, 1974	President complies with the Special Prosecutor's March 15 subpoena.
April 1, 1974	Brief for the U.S. in conviction appeals of Barker, Martinez, Sturgis, and Gonzalez is filed.
April 3, 1974	Howard E. Reinecke indicted on three counts of perjury.

<i>Date</i>	<i>Event</i>
April 5, 1974-----	Chapin found guilty on two of three counts. American Ship Building is charged with one count of conspiracy and one count of illegal campaign contributions, 18 USC 610.
	George M. Steinbrenner, III, President of American Ship Building, is charged with one count of conspiracy, five counts of willful violation of 18 USC 610, two counts of aiding and abetting an individual to make a false statement to agents of the FBI in violation of 18 USC Sections 2 and 1001, four counts of obstruction of justice in violation of 18 USC 1503 and two counts of obstruction of a criminal investigation, 18 USC 1510.
	John H. Melcher, Jr., vice-president of American Ship Building, pleads guilty to a charge of being an accessory after the fact to an illegal campaign contribution; fined \$2,500.
	Porter is sentenced to a minimum of 5 months and a maximum of 15 months in prison, all but 30 days suspended. Served April 22 to May 17.
April 16, 1974-----	Special Prosecutor issues a trial subpoena for 64 White House taped conversations.
April 28, 1974-----	Mitchell and Stans are acquitted on all charges in Vesco trial.
April 30, 1974-----	President submits transcripts of recorded conversations to House Judiciary Committee.
May 1, 1974-----	Thomas V. Jones, President of Northrop Corp., pleads guilty to a one-count charge of willfully aiding and abetting a firm to commit a violation of a statute prohibiting campaign contributions by Government contractor, 18 USC 611; fined \$5,000. Northrop Corporation pleads guilty to violations of 18 USC 611; fined \$5,000.
	James Allen, of Northrop, pleads guilty to non-willful violations of 18 USC 610; fined \$1,000.
May 3, 1974-----	Panel of experts appointed by Judge Sirica issues a report on their examination of White House tapes.
May 6, 1974-----	Lehigh Valley Cooperative Farmers pleads guilty to a violation of 18 USC 610; fined \$5,000.
May 15, 1974-----	Chapin is sentenced to serve 10 to 30 months.
May 16, 1974-----	Kleindienst pleads guilty to a violation of 2 USC 192, refusal to answer pertinent questions before a Senate Committee. Later sentenced to serve 30 days, and fined \$100. Sentence is suspended.
May 17, 1974-----	Richard Allison, of Lehigh Valley Cooperative Farmers, pleads guilty to a non-willful violation of 18 USC 610; fined \$10,000. Sentence is suspended.
May 20, 1974-----	Judge Sirica enforces Special Prosecutor's trial subpoena of April 16.
May 21, 1974-----	Magruder is sentenced to a prison term of ten months to four years.
May 22, 1974-----	De Diego indictment is dismissed in Fielding break-in case.

<i>Date</i>	<i>Event</i>
May 28, 1974 -----	Francis X. Carroll pleads guilty to non-willful violations in Lehigh Valley contributions case, 18 USC sections 2 and 610.
May 31, 1974 -----	Supreme Court grants writs of certiorari on enforcement of tapes subpoena. Chief Judge George Hart grants an extension to Grand Jury I. Expiration date set at December 4, 1974.
June 3, 1974 -----	Charles Colson pleads guilty to an information charging one count of obstruction of justice. Previous indictments are dismissed.
June 7, 1974 -----	Court of Appeals denies petition for writ of mandamus to recuse Judge Sirica.
June 14, 1974 -----	Court of Appeals hears oral arguments in the appeals of Liddy, Barker, Martinez, Sturgis, McCord, Hunt, and Gonzalez.
June 21, 1974 -----	Colson is sentenced to serve one to three years in prison and is fined \$5,000.
June 24, 1974 -----	National By-Products, Inc., pleads guilty to a violation of 18 USC 610; fined \$1,000.
June 26, 1974 -----	Fielding break-in trial begins.
June 27-28, 1974 -----	James St. Clair appears before the House Judiciary Committee to present a defense for the President.
July 8, 1974 -----	Supreme Court hears oral arguments in <i>U.S. v. Nixon</i> .
July 12, 1974 -----	Jury returns guilty verdict against Ehrlichman, Martinez, Liddy and Barker in Fielding break-in trial.
July 23, 1974 -----	David Parr pleads guilty to a one-count charge of conspiracy to make an illegal campaign contribution. He is later sentenced to four months in prison and fined \$10,000.
July 24, 1974 -----	Supreme Court unanimously upholds Special Prosecutor's tapes subpoena for Watergate trial.
July 25, 1974 -----	Supreme Court denies petition for writ of certiorari to review ruling concerning recusal of Judge Sirica.
July 27, 1974 -----	Jury finds Reinecke guilty on one count of perjury. House Judiciary Committee adopts Article I of impeachment resolution charging the President with obstruction of justice.
July 29, 1974 -----	John Connally is indicted on two counts of accepting an illegal payment, one count of conspiracy to commit perjury and obstruct justice, and two counts of making a false declaration before a grand jury. Jake Jacobsen is indicted on one count of making an illegal payment to a public official.
	House Judiciary Committee adopts Article II of impeachment resolution charging the President with misuse of powers, violating his oath of office.
July 30, 1974 -----	House Judiciary Committee adopts Article III of impeachment resolution charging the President with failure to comply with House subpoenas.
July 31, 1974 -----	Sentences are handed down in Fielding break-in case. Harold S. Nelson pleads guilty to charges of conspiracy to make an illegal payment to a Government official, and to make illegal campaign contributions.

<i>Date</i>	<i>Event</i>
August 1, 1974-----	Associated Milk Producers, Inc., pleads guilty to one count of violating 18 USC 371, and five counts of violating 18 USC 610; fined \$35,000 (campaign contributions).
August 2, 1974-----	Dean is sentenced to serve a prison term of one to four years.
August 7, 1974-----	Jacobsen pleads guilty to July 29 indictment.
August 9, 1974-----	Richard Nixon resigns from office.
August 12, 1974-----	Norman Sherman pleads guilty in a dairy contributions matter to non-willful violation of 18 USC 610, sections 2 and 610.
	John Valentine pleads guilty in a dairy contributions matter to non-willful violation of 18 USC 610, sections 2 and 610.
August 14, 1974-----	U.S. Court of Appeals denies Haldeman petition for writ of mandamus concerning validity of grand jury.
August 15, 1974-----	Members of the Special Prosecution Force meet with White House Counsel to discuss status of Nixon materials.
August 22, 1974-----	U.S. Court of Appeals suggests a three to four week continuance for <i>Mitchell et al.</i> trial.
August 23, 1974-----	American Ship Building Company pleads guilty to April 5 indictment.
	George M. Steinbrenner, III pleads guilty to one count from the April 5 indictment that charged a violation of 18 USC 371 (conspiracy) and an information charging one count of violating 18 USC sections 3 and 610.
August 30, 1974-----	Steinbrenner is fined \$15,000; American Ship Building fined \$20,000.
September 2, 1974-----	Supreme Court denies Ehrlichman's application for stay of trial.
September 8, 1974-----	President Ford pardons Richard Nixon.
	President Ford announces the agreement between Sampson and Nixon giving Nixon ownership and control over access to Nixon Administration papers.
September 9, 1974-----	Brief for the U.S. in the conviction appeal of Dwight Chapin is filed.
September 17, 1974----	LBC & W, Inc. pleads guilty to one count of non-willful violation of 18 USC 610; fined \$2,000.
	William Lyles, Sr., of LBC & W, pleads guilty to two counts of non-willful violations of 18 USC 610; fined \$2,000.
September 20, 1974----	U.S. Court of Appeals denies Strachan's petition for a writ of mandamus.
	U.S. Court of Appeals denies Mitchell and Ehrlichman petitions for writs of prohibition and/or mandamus seeking indefinite postponement of the trial.
September 28, 1974----	Senate Select Committee completes its work.
September 30, 1974----	Strachan's case is severed from <i>Mitchell et al.</i> trial.
October 1, 1974-----	Watergate cover-up trial begins.
October 8, 1974-----	Greyhound Corporation pleads guilty to a violation of 18 USC 610; fined \$5,000.

<i>Date</i>	<i>Event</i>
October 12, 1974.....	Leon Jaworski announces his resignation as Special Prosecutor, effective October 25.
October 17, 1974.....	Richard Nixon asks the Court to enforce September 7 Nixon-Sampson agreement.
October 23, 1974.....	Time Oil Corporation pleads guilty to two counts of violating 18 USC 610; fined \$5,000.
	Raymond Abendroth, of Time Oil, pleads guilty to two counts of non-willful violations of 18 USC 610; fined \$2,000.
October 26, 1974.....	Henry S. Ruth, Jr., is sworn in as the third Special Prosecutor.
November 8, 1974.....	Edward L. Morgan pleads guilty to one count of conspiracy to impair, impede, defeat and obstruct the proper and lawful governmental functions of the IRS. He is sentenced, on December 19, to serve two years in prison, all but four months suspended.
November 9, 1974.....	Special Prosecutor Ruth, Mr. Buchen, counsel to the President, Mr. Sampson of General Services, and Mr. Knight, of the Secret Service, sign an agreement that permits the Special Prosecutor to gain access to Nixon Administration tapes and documents pertaining to his investigations.
November 11, 1974....	Supreme Court denies Haldeman petition for writ of certiorari to review denial of mandamus relating to grand jury extension.
November 15, 1974....	Jack Gleason pleads guilty to an information charging a one-count violation of the Federal Corrupt Practices Act. Sentence is suspended.
December 3, 1974.....	Charles N. Huselman, of HMS Electric Corp., pleads guilty to a non-willful violation of 18 USC 610; fined \$1,000.
December 6, 1974.....	Liddy files petition for writ of certiorari in break-in conviction.
December 10, 1974....	Tim Babcock pleads guilty to a charge of a one-count violation of making a contribution in the name of another person. Sentenced later to four months in prison.
December 11, 1974....	Harry S. Dent, Jr., pleads guilty to a one-count charge of violating the Federal Corrupt Practices Act. He is sentenced to one month unsupervised probation.
December 12, 1974....	Court of Appeals affirms the convictions of Liddy and McCord in Watergate break-in.
December 13, 1974....	DKI for '74 pleads guilty to violations of failing to report receipt of contributions and failure to report names, addresses, occupations and principal places of business of persons making contributions. Sentence is suspended.
December 19, 1974....	President Ford Signs S. 4016 into law—the Presidential Recordings and Materials Preservation Act.
	Stuart H. Russell is indicted on one count conspiracy to violate 18 USC 610, two counts of aiding and abetting a willful violation of 18 USC 610 (campaign contributions).

<i>Date</i>	<i>Event</i>
December 23, 1974.....	Jack Chestnut is indicted on one count of willful violation of 18 USC 610, aiding and abetting an illegal campaign contribution.
December 29, 1974.....	Watergate cover-up case goes to the jury.
December 30, 1974.....	Ashland Oil, Inc., pleads guilty to five counts of violating 18 USC 610; fined \$25,000.
January 1, 1975.....	Jury convicts all but Parkinson in cover-up trial.
January 8, 1975.....	Dean, Magruder and Kalmbach are released from prison; sentences are reduced to time served.
January 13, 1975.....	U.S. files memorandum in opposition to Liddy's petition for certiorari.
January 27, 1975.....	Liddy petition for certiorari is denied.
January 28, 1975.....	Ratrie, Robbins and Schweitzer, Inc., pleads guilty to violations of 18 USC 610; fined \$2,500.
	Harry Ratrie and Augustus Robbins, III, of RR&S, plead guilty to non-willful violations of 18 USC 610; sentences suspended.
February 7, 1975.....	Court of Appeals hears oral arguments in Chapin appeal.
February 10, 1975.....	McCord files petition for writ of certiorari in break-in conviction.
February 12, 1975.....	Grand Jury II expires.
February 19, 1975.....	Frank DeMarco and Ralph Newman are indicted for conspiracy to defraud the U.S. and the IRS in connection with the donation of the pre-presidential papers of Richard Nixon.
February 21, 1975.....	Sentences handed down in cover-up trial.
February 25, 1975.....	Court of Appeals affirms convictions of Barker, Martinez, Sturgis, Gonzalez and Hunt in Watergate break-in.
March 4, 1975.....	Brief for the U.S. to reinstate De Diego indictment is filed.
March 10, 1975.....	At the request of the Special Prosecutor, charges against Strachan are dropped.
March 12, 1975.....	Maurice Stans pleads guilty to three counts, violation of the reporting sections of the Federal Election Campaign Act of 1971, 2 USC, Section 434 (a) and (b), 441; and two counts violation of 18 USC 610, accepting an illegal campaign contribution.
March 14, 1975.....	LaRue is sentenced to serve six months in prison.
March 19, 1975.....	DeMarco and Newman file a motion to have their case transferred.
March 31, 1975.....	Brief for the U.S. in the conviction appeal of Howard Reinecke is filed.
April 2, 1975.....	Trial of John Connally begins.
April 16, 1975.....	Court of Appeals reinstates De Diego indictment.
April 17, 1975.....	Connally is acquitted on two counts.
April 18, 1975.....	Court dismisses remaining three counts against Connally on motion of the Special Prosecutor.
April 21, 1975.....	McCord petition for writ of certiorari is denied.
April 23, 1975.....	Morgan is released from prison.
May 2, 1975.....	Brief for the U.S. in the conviction appeal of Ehrlichman, Barker, Martinez, and Liddy is filed (Fielding break-in).

<i>Date</i>	<i>Event</i>
May 5, 1975-----	Babcock files appeal of sentence on his guilty plea.
May 6, 1975-----	U.S. files petition for a writ of mandamus in DeMarco-Newman case.
May 8, 1975-----	Jury in New York City finds Chestnut guilty.
May 14, 1975-----	Stans is fined \$5,000.
May 19, 1975-----	Judge Gesell dismisses charges against De Diego at the request of the Special Prosecutor.
May 29, 1975-----	McCord is released from prison.
June 6, 1975-----	Court of Appeals hears oral arguments in Reinecke appeal.
June 11, 1975-----	Wendell Wyatt pleads guilty to a misdemeanor violation of the reporting provisions of the Federal Election Campaign Act of 1971. Later, fined \$750.
June 18, 1975-----	Court of Appeals hears oral arguments in Ehrlichman appeal (Fielding break-in).
June 23-24, 1975-----	Richard M. Nixon gives sworn testimony in matters under investigation by the Special Prosecutor.
July 3, 1975-----	Grand Jury III expires.
July 11, 1975-----	Russell convicted on all three counts in San Antonio, Texas.
July 14, 1975-----	Court of Appeals affirms Chapin conviction.

Bibliography of Watergate Source Materials

There are two useful Government publications for the general reader. They are:

The Final Report of the Senate Select Committee on Presidential Campaign Activities of the United States Senate [Senate Watergate Committee Report]
and

Impeachment of Richard M. Nixon, President of the United States, Report of the Committee on the Judiciary, House of Representatives [House Impeachment Inquiry Report]

Both publications are available through the Government Printing Office.

For the specialist, there are the 25 volumes of testimony before the Senate Select Committee on Presidential Campaign Activities; 43 volumes of evidentiary material and testimony released by the House Impeachment inquiry staff; numerous other volumes of relevant hearings and reports by congressional committees; transcripts of criminal proceedings brought by the Watergate Special Prosecution Force; and some 35 books published to date on the Watergate scandal. The bibliography which follows lists, by subject matter, some of these publications. All Government publications are available [unless supplies are exhausted] from the Government Printing Office.

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Appendix 1, *Presidential Statements on the Watergate Break-in and its Investigation*. 1974.

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Richard M. Nixon v. Administrator, General Services Administration, USDC DC Civil No. 74-1852. Nixon suit challenging the constitutionality of Public Documents Act of 1974.

Appendix M:

Staff List

Special Prosecutors:

	<i>Dates of service</i>
Archibald Cox-----	May 25, 1973–October 20, 1973.
Leon Jaworski-----	November 5, 1973–October 25, 1974.
Henry S. Ruth, Jr.-----	October 26, 1974–October 10, 1975. ¹

Staff:

Nathaniel H. Akerman-----	June, 1973–October, 1975.
Carolyn B. Amiger-----	July, 1973–October, 1975.
Monica Bailley-----	July, 1973.
Philip J. Bakes, Jr.-----	June, 1973–October, 1974.
John F. Barker-----	July, 1973–September, 1975.
Peter W. Benner-----	May, 1975–August, 1975 (intermittent).
Richard H. Ben-Veniste-----	July, 1973–February, 1975.
James J. Boczar-----	July, 1973–July, 1974 (intermittent).
Nolan A. Bowie-----	December, 1974–May, 1975.
Harry M. Bratt-----	June, 1973–March, 1974.
Margaret M. Breniman-----	June, 1973–March, 1974.
Charles R. Breyer-----	August, 1973–November, 1974.
Stephen G. Breyer-----	June, 1973–June, 1974 (intermittent).
Rose S. Bryan-----	July, 1973–October, 1975 (intermittent).
Florence L. Campbell-----	June, 1973–October, 1975.
Verona Cantly-----	July, 1973–January, 1975.
Richard A. Carter-----	August, 1974–May, 1975.
Robert M. Chideckel-----	August, 1973–August, 1974.
Toni L. Childers-----	August, 1974–May, 1975.
Phyllis E. Clancy-----	September, 1973–October, 1975.
Joseph J. Connolly-----	June, 1973–May, 1974.
David J. Cook-----	January, 1974–May, 1974.
Richard J. Davis-----	July, 1973–August, 1975.
Barbara B. DeLeon-----	May, 1974–October, 1975.
Judith A. Denny-----	August, 1973–October, 1975.
Albert P. Deschenes-----	May, 1975–July, 1975 (intermittent).
Michael J. Dickman-----	August, 1973–September, 1974.
Gayle A. Dicks-----	July, 1973–October, 1973.
Loretta L. Dicks-----	June, 1973–December, 1973.
Theresa A. Doramus-----	July, 1973–September, 1973.
James S. Doyle-----	June, 1973–May, 1975.
Elizabeth M. Dunigan-----	November, 1974–October, 1975.
Robin D. Edwards-----	January, 1974–August, 1975.
Ruby N. Edwards-----	March, 1974–April, 1974.

¹ Ruth served as Deputy Special Prosecutor from July, 1973 to October, 1974.

<i>Staff:</i>	<i>Dates of service</i>
Linda L. Eiskant.....	January, 1974–October, 1975.
Robin A. Elliott.....	September, 1973–May, 1974.
Ellen M. Fahey.....	August, 1973–October, 1975.
Carl B. Feldbaum.....	July, 1973–October, 1975.
Allison Finn.....	November, 1974–July, 1975.
Jonathan A. Flint.....	August, 1974–January, 1975.
Hamilton P. Fox, III.....	July, 1973–December, 1974.
George T. Frampton, Jr.	June, 1973–February, 1975.
Nona J. Funk.....	August, 1973–September, 1973.
John B. Galus.....	October, 1973–August, 1975.
Marcellus Gant.....	February, 1975–July, 1975.
Kenneth S. Geller.....	July, 1973–October, 1975.
Maureen E. Gevilin.....	July, 1973–October, 1975.
William J. Gilbreth.....	April, 1975–August, 1975 (intermittent).
Sidney M. Glazer.....	July, 1973–September, 1974.
Ann B. Goetchius.....	October, 1973–July, 1975.
Gerald Goldman.....	June, 1973–April, 1975.
Mary E. Graham.....	July, 1973–October, 1975.
Stephen E. Haberfeld.....	June, 1973–December, 1974.
Lawrence A. Hammond.....	August, 1973–July, 1974.
Elizabeth A. Harvey.....	May, 1974–October, 1975.
Henry L. Hecht.....	June, 1973–October, 1975.
Philip B. Heymann.....	May, 1973–June, 1975 (intermittent).
Paul R. Hoeber.....	August, 1973–June, 1974.
Cheryl O. Holmes.....	October, 1973–October, 1975.
Jay S. Horowitz.....	August, 1973–October, 1975.
Dixie J. Housman.....	June, 1973–March, 1974.
Archibald B. Hughes.....	January, 1975–February, 1975.
Lawrence Iason, II.....	June, 1973–February, 1975.
Dianna Ingram.....	September, 1973–August, 1975.
Janet Johnson.....	June, 1973–July, 1973.
Marian M. Johnson.....	August, 1973–May, 1975.
Susan E. Kaslow.....	July, 1973–October, 1975.
Sherry F. Kaufman.....	May, 1974–March, 1975.
David H. Kaye.....	June, 1973–December, 1974.
John G. Koeltl.....	August, 1973–November, 1974.
Peter M. Kreindler.....	June, 1973–October, 1975.
Rosanne Kumins.....	May, 1973–August, 1973.
Philip A. Lacovara.....	July, 1973–September, 1974.
Louis B. Lapidus.....	August, 1974–May, 1975.
Cynthia F. Law.....	May, 1974–February, 1975.
Michael L. Lehr.....	December, 1974–October, 1975.
Don Loeb.....	January, 1974–August, 1975 (intermittent).
Gloria L. Lowe.....	June, 1974–October, 1975.
Rosalyn L. Lowenhaupt.....	July, 1974–October, 1974.
Eugene C. Lozner.....	December, 1973–April, 1974.
Ilona L. Lubman.....	February, 1974–June, 1974.
Paula J. Lusby.....	August, 1973–January, 1974.
John P. Lydick.....	April, 1975–October, 1975.
Daniel F. Mann.....	August, 1973–October, 1975.
Francis J. Martin.....	June, 1973–October, 1975.
Thomas J. Martorelli.....	January, 1974–May, 1974.
Linda S. Mayes.....	June, 1973–October, 1974.
Thomas F. McBride.....	May, 1973–October, 1975.

*Staff:**Dates of service*

William H. Merrill.....	June, 1973-September, 1974.
Paul R. Michel.....	April, 1974-August, 1975.
Yolanda D. Molock.....	September, 1973-August, 1975.
Betty J. Monroe.....	July, 1973-October, 1975.
Pamela D. Morris.....	June, 1973-October, 1975.
Scott W. Muller.....	October, 1974-June, 1975 (intermittent).
Stanley Nalesnik.....	August, 1974-May, 1975.
James F. Neal.....	May, 1973-January, 1975 (intermittent).
Shirah Neiman.....	July, 1975-October, 1975.
Jo Ann Nelson.....	August, 1974-May, 1975.
Linda D. Noonan.....	September, 1973-September, 1975.
Robert L. Palmer.....	July, 1973-October, 1974.
Anthony J. Passaretti.....	June, 1974-May, 1975.
Mark B. Peabody.....	August, 1974-October, 1975.
Julia M. Pfeltz.....	June, 1973-November, 1974.
Donna J. Phillips.....	July, 1974-December, 1974 (intermittent).
Charles A. Pidano, Jr.....	September, 1973-August, 1974.
Charles W. Pitcher, Jr.....	September, 1973-August, 1975.
Jean R. Pyles.....	July, 1973-April, 1974.
James L. Quarles, III.....	June, 1973-June, 1975.
Barbara J. Raney.....	October, 1973-September, 1975.
Ann J. Reines.....	May, 1974-August, 1975 (intermittent).
Peter F. Rient.....	May, 1973-October, 1975.
Patricia A. Robertson.....	August, 1974-May, 1975.
Cynthia J. Robinson.....	October, 1973-July, 1975.
Renee M. Robinson.....	August, 1973-August, 1975.
Judith H. Rollenhagen.....	July, 1973-August, 1974.
Patricia Ronkovich.....	June, 1973-September, 1975 (intermittent).
Daniel N. Rosenblatt.....	April, 1974-October, 1975.
Thomas P. Ruane.....	July, 1973-October, 1975.
Charles F. Ruff.....	July, 1973-July, 1975.
Jon A. Sale.....	September, 1973-August, 1975.
Susan L. Sauntry.....	October, 1974-November, 1974 (intermittent).
Meriam I. Schroeder.....	September, 1973-August, 1974.
Monica Schuster.....	October, 1973-May, 1974.
Linda E. Schwarz.....	September, 1973-October, 1975.
Charles S. Scott.....	January, 1974-May, 1974.
Audrey M. Snell.....	June, 1973-September, 1975.
Joseph N. Sprowl, Jr.....	January, 1974-May, 1974.
Barbara A. Stagnaro.....	July, 1973-October, 1975.
Jay B. Stephens.....	November, 1974-October, 1975.
Hazel D. Stewart.....	September, 1973-October, 1975.
Theresa M. Strong.....	September, 1973-May, 1975.
Mark A. Surette.....	August, 1974-May, 1975.
Lois M. Swann.....	October, 1973-March, 1974.
Susanne D. Thevenet.....	July, 1973-September, 1975.
Karen J. Thompson.....	June, 1973-April, 1975.
Mark R. Thompson.....	September, 1973-January, 1975.
Christine M. Thren.....	August, 1975-October, 1975.
Frank M. Tuerkheimer.....	December, 1973-June, 1975.
Richard D. Van Wagenen.....	April, 1975-July, 1975.
Jill W. Volner.....	July, 1973-April, 1975.
James Vorenberg.....	May, 1973-October, 1975 (intermittent).
Richard D. Weinberg.....	July, 1973-April, 1975.

<i>Staff:</i>	<i>Dates of service</i>
Suzanne L. Westfall-----	July, 1973-January, 1975.
Audrey J. Williams-----	July, 1973-March, 1975.
Michael Y. Williams-----	July, 1973-October, 1975.
Sally G. Willis-----	June, 1973-October, 1975.
Roger M. Witten-----	June, 1973-December, 1974.
William F. Woods-----	August, 1974-October, 1975.
Tyrone C. Wooten-----	October, 1973-May, 1974.
Gilbert A. Wright-----	July, 1973-August, 1973.
Pamela Wright-----	July, 1973-October, 1975.
Carol A. Zorger-----	June, 1973-March, 1975 (intermittent).

FEDERAL PROTECTIVE SERVICE:

The following officers were detailed from the General Services Administration, Federal Protective Service, and provided security protection for the Watergate Special Prosecution Force:

Lt. James M. Hairston-----	June, 1973-October, 1975.
Lt. Edward B. King-----	June, 1973-April, 1974.
Lt. O. H. Lewis-----	June, 1973-October, 1975.
Johnny L. Augustus-----	June, 1973-October, 1975.
James M. Banks-----	June, 1973-October, 1975.
Lindsay L. Boomer-----	July, 1973-October, 1975.
Russell F. Curry-----	July, 1973-October, 1975.
Joel D. Davies-----	June, 1973-October, 1975.
Jimmy Dickson-----	June, 1973-October, 1975.
James O. Highsmith-----	June, 1973-October, 1975.
Willie Hilliard-----	June, 1973-October, 1975.
Wilbert L. Lofton-----	June, 1973-October, 1975.
Joseph F. Maisner-----	August, 1973-October, 1975.
John E. McFarland-----	June, 1973-October, 1975.
Richard A. McGriff-----	June, 1973-October, 1975.
James F. Moore-----	July, 1973-October, 1975.
Waymon Stewart-----	June, 1973-October, 1975.
Thomas C. Watson-----	June, 1973-October, 1975.
John C. Wright-----	August, 1973-April, 1975.

